United States Court of Appeals

for the Second Circuit



APPELLANT'S APPENDIX

ORIGINAL 75-1107

B
P/S

United States Court of Appeals

For the Second Circuit.

UNITED STATES OF AMERICA,

-against-

ERNEST CORALLUZZO, et al.,
Appellants.

On Appeal From The United States District Court
For The Southern District Of New York

APPENDIX ON BEHALF OF APPELLANTS CAPOTORTO, BERTOLOTTI, GUERRA, THOMPSON AND CAMPERLINGO

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Of Counsel

UNITED STATES COURT OF APPEALS
FILED
JUN 2 1975
DANIEL FUSARO, CLERK
SECOND CIRCUIT

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA

-vs-

JAMES CAPOTORTO, ERNEST CORALLUZZO, JOSEPH CAMPERLINGO, RAYMOND THOMPSON, ANGELO BERTOLOTTI, ET AL

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK.

CASE NO. S 75 Cr. [illegible]

JUDGE CARTER

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3. Query to the Court

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DEFENDANT LEPORE:

1. Written query to the Court
2. As above

DEFENDANT CIMMINS:

1. Questions to the Court

DEFT. ANGLEY:

1. Written to the Court, questions.

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1. Questions to the Court

D. C. Form No. 100

CRIMINAL DOCKET

JUDGE CARTER

75 CRIM. 5

TITLE OF CASE	ATTORNEYS
THE UNITED STATES *vs.* (SEE BACK FOR THE NAMES OF DEFENDANTS)	*For U. S.:* T. Gorman Reilly, AUSA 791-1949 3-25-75 *For Defendant:* See Appearance Sheet

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(07)		3/13/75	#48270	5 -	
Fine,		3/13/75	#48249	5 -	
Clerk,	-	3/18/75	Treas		10
Marshal,		3/24/75	#48816	5 -	
Attorney,		3/25/75	Treas		
Commissioner's Court,		3/27/75	(Telecourt)	5 -	
Witnesses, 21:846, 812, 841(a)(1), (b)		4/4/75	Treas		5
Consp. to viol. Fed. Narco. Laws. (Ct. 1)					
Distr. & possess. w/intent to distr. Cocaine, II. (Cts. 2-9)					
(Nine Counts)					

DATE	PROCEEDINGS
1-6-75	Filed indictment. (Superseding 74Cr620 and referred to Carter, J.)
1-8-75	JOSEPH LEPORE -- Filed order--ORDERED that Jerome Breslaw, M.D. a qualified specialist in internal medicine and gastroenterology be employed to examine the said deft. at Pelham Bay Hospital, Bronx, N for the purpose of determining whether the said deft. is physical and medically able to stand trial at this time; ORDERED that upon upon completing his examination, the said physician shall submit an oral report of his findings directly to the court, to be follo by a written report promptly thereafter; ORDERED that the U.S. [illegible] pay a reasonable fee to said physician [illegible]

A

CARTER, J.

R 5 USA VS CORALLUZZO ET AL

SHEET FOR ATTYS. LISTING

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Or Judgment
	DEFT. / ATTY.	
	WEBSTER BIVENS — Michael Stokamer, 401 Bdwy, NYC 10013, Suite 1808 966-7693	
	NATHANIEL ARNOLD — Gilbert Epstein, 253 Bdwy., NYC	
	PHILLIP CIMINO — Goldberger, Feldman & Breitbart, 401 Bdwy. Suite 306, NYC 10013	
	JOSEPH LEPORE — Wm. Richman, 565 5th Ave, NYC 10017	
	ANGELO BERTOLOTTI, JOSEPH CAMPERLINGO — Jacob Kossman, 1325 Spruce St., Philadelphia, PA 19107	
	LOUIS GUERRA — Gerald Lefcourt, 640 Bdwy, NYC 10012, 677-1552	
	THOMAS VASTA — Harold Frankel, 253 Bdwy, NYC 10007	
	STEVEN CREA — Paul Victor, 67 Wall St., NYC 10005, 943-0880	
	ANITA CORALLUZZO — Sanford Katz, 299 Bdwy, NYC 10007, 349-7755	
	JOSEPH DE LUCA — Michael Weinstein, 149 E.116St., NYC 10029, 348-1005	
	RAYMOND THOMPSON — Allan Weinstein, 420 Lincoln Road, Suite 38, Miami Beach, Florida 3313	
	JAMES MICHAEL CAPOTORTO — Gilbert Epstein, 253 B'way, NYC. 10007 - 349 3977	
	ANGELO BERTOLOTTI — Sanford Katz, 299 Bdwy, NYC 10007, 349-7755	
	JOSEPH CAMPERLINGO — Goldberger, Fledman & Breitbart, 401 Bdwy, Suite 306, NYC	

(to):

DATE		CLERK'S FEES PLAINTIFF	CLERK'S FEES DEFENDANT
	✓ 1. ERNEST CORALLUZZO -142		
	2. ALBERT ROSSI, JR. -1		
	3. JOSEPH DeLUCA -142 3-20-75		
	4. JAMES ANGLEY -1 3/20/75		
	5. ROBERT BROWNING, a/k/a Bobby Gooch -142		
	6. FRANKLIN FLYNN -1		
	7. ROGER SILVERIO, a/k/a Ricky, a/k/a Doug -1		
	8. ANGELO IACONO -1		
	✓ 9. JAMES CAPOTORTO -1		
	✓ 10. JOSEPH CAMPERLINGO -1		
	✓ 11. RAYMOND THOMPSON -1		
	✓ 12. ANGELO BERTOLOTTI -1		
	✓ 13. WEBSTER EUGENE BIVENS -1 -1/30/75		
	14. VINCENT ARTUSO -143		
	✓ 15. STEVEN CREA -143 -1/30/75		
	✓ 16. JOSEPH LEPORE -145		
	✓ 17. GERALD RUBIN, a/k/a Jerry -1		
	✓ 18. CHARLES GUIDA, a/k/a Charley Chase -1 2/13/75		
	19. PETER COSME, a/k/a Inky -147		
	✓ 20. PHILLIP CIMMINO, a/k/a Philly Rags -145 -1/30/75		
	21. ANTHONY DePASQUA, a/k/a Boots -1,546		
	✓ 22. THOMAS VASTA -1 1/30/75		
	23. MARIA MARRERO -148		
	✓ 24. SUSANA SHERMAN -1 -1/30/75		
	25. MARILYN GRECO -1		
	26. LOUIS GUERRA -142 3-20-75		
	✓ 27. ANITA CORALLUZZO -1 -1/30/75		
	28. CATHY SPANGLER -1		
	✓ 29. NATHANIEL ARNOLD, a/k/a Willie Lump Lump -149 -1/30/75		

Date	PROCEEDINGS	Date Order Judgment
	ERNEST CORALLUZZO (atty. Irving Anolik present)--withdraws plea of not guilty and pleads GUILTY to counts 1 & 2. P.S.R. ordered. Sentence adj.to Feb. 11, 1975. Deft. produced on w/h/c and writ satisfied. Carter,J.	
5	ROBERT BROWNING (atty. Mark Landsman present)--withdraws plea of not guilty and pleads GUILTY to count 1 only. P.S.R. ordered. Sentence adj. to Feb. 18,1975. Deft. produced on w/h/c and writ satisfied. Carter,J.	
6-75	JERRY RUBIN (atty. Murray Richman present)--withdraws plea of not guilty and pleads GUILTY to 1 only. P.S.R. ordered. Sentence adj. to Feb. 20,1975. Deft. contd. on bial fixed at $10,000 cash. Carter,J.	
6-75	CHARLES GUIDA (atty. Jerald Rosenthal present) withdraws plea of not guilty and pleads GUILTY to count 1 only. P.S.R. ordered. Sentence adj. to Feb. 13,1975. Deft. produced on w/h/c.Writ satisfied. Carter,J.	
6-75	Hearing begun as to defts. JAMES CAPORTORTO, ANITA CORALLUZZO AND LOUIS GUERRA and concluded. Decision Reserved,Carter,J.	
7-75	PETER COSME is severed. Carter,J.	
7-75	Jury trial begun as to the following defts.: JOSEPH DELUCA — maria MARRERO JAMES ANGLEY — SUSANNA SHERMAN JAMES CAPOTORTO — MARILYN GRECO RAYMOND THOMPSON — PHILLIP CIMMINS JAMES CAMPERLINGO — N ATHANIEL ARNOLD ANGELO BERTOLOTTI — CATHY SPANGLER WEBSTER EUGENE BIVENO — ANITA CORALLUZZO STEVEN CREA — LOUIS GUERRRA JOSEPH LEPORE THOMAS VASTA	
75	Court directs entry of plea of NOT GUILTY as to the folling deft.: THOMAS VASTA. The following defts. have all entered pleas of NOT GUILTY on this indictment before the case proceeded to trial. JOSEPH DELUCA — SUSANA SHERMAN JAMES ANGLEY — MARILYN GRECO JAMES CAPOTORTO — PHILLIP CIMMINS RAYMOND THOMPSON — NATHANIEL ARNOLD JAMES CAMPERLINGO — CATHY SPANGLER ANGELO BERTOLOTTI — ANITA CORALLUZZO WEBSTER EUGENE BIVENS — LOUIS GUERRA STEVEN CREA JOSEPH LEPORE All bail is contd. on this indictment as previously fixed on indictment 74 Cr. 620. Defts. Phillip Cimmins and Nathaniel Arnold are remanded as previously fixed on indictment 74 Cr.620.	

(over)

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DATE	PROCEEDINGS	Date O Judgme
1-8-75	Trial contd.	
1-9-75	Trial contd.	
01-28-75	Filed one sealed envelope ordered sealed by order of the court and is not to be opened until further order of the court and is placed in the vault, Rm.602, cashier's office. So ordered, Carter, J.	
01-13-75	Trial contd.	
01-14-75	Trial contd.	
01-15-75	Trial contd.	
01-16-75	Trial contd.	
01-17-75	Trial contd.	
01-20-75	Trial contd.	
01-21-75	Trial contd.	
01-22-75	Trial contd.	
01-23-75	Trial contd.	
01-24-75	Trial contd.	
0-27-75	Trial Contd.	
01-28-75	Trialcontd.	
01-29-75	Trial contd.	
01-30-75	Trial contd. and concluded. Jury verdict as to the following defts.: JOSEPH DELUCA -- GUILTY on ct.1 NOT GUILTY on ct. 2 JAMES ANGLEY -- GUILTY on ct. 1 JAMES CAPOTORTO -- GUILTY on ct. 1 JOSEPH CAMPERLINGO -- GUILTY on ct. 1 RAYMOND THOMPSON -- GUILTY on ct. 1 ANGELO BERTOLOTTI -- GUILTY on ct. 1 WEBSTER BIVENS -- NOT GUILTY on ct. 1 (See Pg. 5)	

D. C. 110 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	Date Judge
	✓ STEVEN CREA -- NOT GUILTY on cts. 1 and 3	
	✓ JOSEPH LEPORE -- NOT GUILTY on cts. 1 and 5	
	✓ PHILLIP CIMMINO -- NOT GUILTY on cts. 1 and 5	
	✓ THOMAS VASTA -- NOT GUILTY on ct. 1	
	✓ SUSANA SHERMAN -- NOT GUILTY on ct. 1	
	MARILYN GRECO -- MISTRIAL on ct. 1	
	LOUIS GUERRA -- GUILTY on ct. 1 NOT GUILTY on ct. 4	
	✓ ANITA CORALLUZZO -- NOT GUILTY on ct. 1	
	CATHY SPANGLER -- MISTRIAL on ct. 1	
	✓ NATHANIEL ARNOLD -- NOT GUILTY on cts. 1 & 9	
01-30-75	LOUIS GUERRA -- P.S.R. ordered. Sentence adj. to March 4,1975. Bail contd. at $50,000 P.R.B. ,secured by $5,000. Carter,J.	
01-30-75	JAMES CAPOTORTO -- P.S. R. ordered. Sentence adj. to March 4,1975. Bail increased to $50,000 from preivous bail fixed at $50,000, TOTAL of $100,000. Deft. remanded in lieu of bail.(remand to marshal's office) Carter,J.	
01-30-75	ANGELO BERTOLOTTI-- P.S.R. ordered, Sentence adj. to March 4,1975. Bail in the sum of $10,000 is increased to $75,000 and the deft. is remanded in lieu of bail. Bail limits same as before. (remand to marshal's office) Carter,J.	
01-30-75	JAMES CAMPERLINGO--P.S.R. ordered. Sentence adj. to March 18,1975. Bail in the sum of $25,000 is increased to $125,000 and the deft. is remanded inlieu of bail. Bail limits same as before. (remand to marshal's office) Carter,J.	
01-30-75	RAYMOND THOMPSON -- P.S.R. ordered. Sentence adj. to March 4,1975. Deft. remanded without bail.(remand to marshal's office) Cart	
01-30-75	JOSEPH DELUCA -- P.S.R, ordered. Sentence adj. to March 18,1975. Bail contd. Carter,J.	
01-30-75	JAMES ANGLEY -- P.S. R. ordered. Sentence adj. to March 18,1975. Bail contd. Carter,J.	
02-06-75	THE FOLLOWING PAPERS WERE BROUGHT DOWN FROM JUDGE CARTER'S CHAMBERS AFTER TRIAL: Filed defts. WEBSTER BIVENS request for marshall ot evidence con	

DATE	PROCEEDINGS	Dat Judg
2-06-75	LOUIS GURRA--Filed defts. request to charge based on evidence.	
	WEBSTER BIVENS--Filed defts. affdt. and notice of motion precluding the prosecution from eliciting the defts. previous criminal record upon cross examination ret.on: date to be fixed bycourt.	
02-06-75	JOSEPH LEPORE--Filed defts. request to charge.(also see 74 Cr.620) (file d in 74 CR 620)	
02-06-75	NATHANIEL ARNOLD / WEBSTER BIVENS } Filed defts. supplemental request to charge.	
02-06-75	CIMINO, PHILLIP--Filed defts. request to charge.	
02-06-75	Filed govts. request to charge.	
02-06-75	JOSEPH LEPORE--Filed defts. statement of facts on behalf of said deft.	
02-06-75	JOSEPH CAMPERLINGO / ANGELO BERTOLOTTI } Filed defts. memorandum in suport of ~~xxxx motions~~ for judgment of acquittal and in the alternative for relief from prejudicial joinder.	
02-03-75	JOSEPH CAMPERLINGO RAYMOND THOMPSON JAMES CAPOTORTO ANGELO BERTOLOTTI — Hearing begun as to these defts.on issue of accepting surety bonds. Bail bonds are subject to the approval of the Clerks office. RAYMOND THOMPSON==bail fixed in the sum of $100,000 ~~xxx~~ cash or surety bond. Bial limits on all defts(listed above) are to cover SDNY,EDNY and S.D. of Florida. Thompson is ordered to report to the U.S. Atys. office in the SD of Florida for the purposed of signing in every week. Carter,J.	
02-06-75	STEVEN CREA -------Filed defts. request to charge.	
02-06-75	ARNOLD / BIVENS } Filed defts. request to charge.	
02-06-75	VASTA--Filed defts. request to charge.	
02-06-75	VASTA--Filed defts. balance of request to charge.	
02-06-75	ANITA CORALUZZO--Filed defts.partial requests to charge.	
02-13-75	JAMES ANGLEY--Filed defts. affdt. and notice of motion to arrest judgment;dismiss indictment,set aside jury verdict and enter judgment of acquittal or for a new trial,etc. ret. on: a date to be fixed by court.	
02-13-75	CHARLES CUIDA aka CHARLIE CHASE--FILED JUDGMENT(atty. Gerald Rosenthal present)---the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a peri of FIVE YEARS(5),pursuant to theprovisions of Title 21, USC,Section The deft. is placed on special parole for a period of THREE YEARS to commence upon the expiration of confinement. Carter,J.(copies issued	

D. C. 110 Rev. Civil Docket Continuation PAGE -7-

DATE	PROCEEDINGS
01-29-75	SUSANNA SHERMAN --Filed CJA copy #2 authorizing payment to Norma Seltzer of 20 E.35St,NYC 10016 for expert services at trial on dates indicated in the amt. of $250.00. Original mailed to Ao, Washington, DC for payment.
01-29-75	SUSANNA SHERMAN---Filed cja copy # 5 authorizing payment to Norma Seltzer for expert services(above) . Carter,J.
01-29-75	SUSANNA SHERMAN --Filed CJA copy # 2 authorizing payment to Norma Seltzer of 20 E.35St,NYC 10016 for expert services at trial on dates indicated in the amt. of $218.76. Original mailed to AO, Washington, DC for payment.
01-29-75	SUSANNA SHERMAN--Filed CJA copy # 5 authorizing payment to Norma Seltzer for expert services(above) Carter,J.
02-13-75	RAYMOND THOMPSON--Filed remand dated Jan.30,1975.
02-13-75	JAMES CAPOTORTO--Filed remand dated Jan.30,1975.
02-13-75	ANGELO BERTOLOTTI--Filed remand dated Jan.30,1975.
02-13-75	JOSEPH CAMPERLINGO--Filed remand dated 1/30/75.
02-11-75	SUSANNA SHERMAN--Filed CJA copy # 2 authorizing payment to Norma Seltz of 20 East 35st,NYC 10016 for expert services at trial on dates indicated in theamt. of $249.38. Original mailed to AO, Washington, DC for payment.
02-11-75	SUSANNA SHERMAN--Filed CJA copy #5 authorizing payment to Norma Seltzer for expert services(above). Carter,J.
02-11-75	SUSANNA SHERMAN--Filed CJA copy #2 authorizing payment to Norma Seltzer of 20 E.35St,NYC 10016 for expert services at trial on dated indicated in the amt. of $201.73. Original mailed to AO, Washington, DC for payment.
02-11-75	SUSANNA SHERMAN--Filed CJA form #5 authorizing payment to Norma Seltzer for expert services(above). Carter,J.
02-19-75	LOUIS GUERRA--Filed defts. affdt. and notice of motion granting deft. a new trial and arresting judgment,etc. ret. on: Feb.28,197 in Rm. 110 at 10am.
02-14-75	JOSEPH DE LUCA--Filed defts. affdt. and notice of motion for an orde to arrest judgment;dismiss indictment;set aside jury verdict an enter judgment of acquittal, for anew trial,etc. ret. on: March 3,1975 at 10am.
02-14-75	JAMES CAPOTORTO RAYMOND THOMPSON----Filed defts. affdt. and notice of mtotion for a new trial,etc. ret. on;date to be set by court.

DATE	PROCEEDINGS	Date Judgm
02-03-75	RAYMOND THOMPSON--Defts. bond of $100,000 posted inFlorida and filed in 74 CR 620 was acknowledged before Eddie Aponte to include the condition that said deft. is to report to the U.S. Attys. office in the southern district of Florida once a week in person.	
2-04-75	ANGELO BERTOLLOTTI--Filed appearance bond in theamt. of $65,000 by the Argonaut Ins. Co.(bail was previously $10,000 and increased to $75,000 by Carter,J.)	
2-04-75	JOSEPH CAMPERLINGO--Filed appearance bond in the amt. of $125,000 by the Argonaut I s. Co.(previous bail was $25,000 increased to $150,000 by Carter,J.)	
02-04-75	JAMES CAPOTORTO--Filed appearance bond in the amt. of $50,000 by the Argonaut Ins. Co.(bail was previously fixed in the amt. of $50,000 for total bail of $100,000 by Carter,J.)	
2-18-75	ROBERT BROWNING- sentence adj. to 2-25-75 at 9:30 AM in Rm 110 - Carter, J.	
2-19-75	BAIL EXONERATED FOR THE FOLLOWING DEFENDANTS: Webster Eugene Bivens Steven Crea Joseph Lepore Phillip Cimmino Thomas Vasta Susana Sherman Anita Caralluzzo Nathaniel Arnold. -------- Carter, J.	
02-21-75	Filed letter of Peter F.K. Baraban to Judge Carter dated 2-13-75 and notice of motion to extent defendants' time to file post trial motions with memo endorsed: RAYMOND THOMPSON's motion for additional time to file post-trial motions is denied. -- Carter, J. m/n	
02-27-75	GERALD RUBIN- Filed Govt's affdvt. for a writ of H/C - writ issued, ret. 3-3-75	
02-27-75	ERNEST CORALLUZZO- Filed Govt's affdvt. for a writ of H/C - writ issued, ret. 3-3-75	
02-28-75	THOMPSON- Filed motion for substitution of counsel (filed in 74 CR 620)	
03-04-75	JAMES CAPOTORTO- Filed Judgment # , , , The defendant is hereby committed to the custody of the Atty. Gen'l or his authorized representative for imprisonment for a period of FIVE (5) YEARS, and the defendant is FINED $5,000. Fine is to be paid or the defendant is to stand committed. Bail pending appeal is continued in the sum of $100,000. Pursuant to the provisions of Title 21, US Code, Sec. 841, the defendant is placed on special parole for a period of THREE (3) YEARS to commence upon the expiration of confinement. -- Carter, J. copies issued.	

DATE	PROCEEDINGS
3-04-75	RAYMOND THOMPSON- Filed Judgment # [illegible] The defendant is hereby committed to the custody of the Atty. Gen'l or his authorized representative for imprisonment for a period of FIVE (5) YEARS, and the defendant is FINED $5,000. Fine is to be paid or the defendant is to stand committed. Bail pending appeal continued in the sum of $100,000. Pursuant to the provisions of Title 21, US Code, Sec 841, the defendant is placed on special parole for a period of THREE (3) YEARS to commence upon the expiration of confinement - Carter, J. copies issued.
03-04 75	JOSEPH CAMPERLINGO- Filed Judgment # [illegible] The defendant is hereby committed to the custody of the Atty. Gen'l or his authorized representative for imprisonment for a period of FIVE (5) YEARS, and the defendant is FINED $10,000. Fine is to be paid or the defendant is to stand committed. Bail pending appeal is continued in the sum of $150,000. Pursuant to Title 21, US Code, Sec. 841, the defendant is placed on special parole for a period of THREE (3) YEARS to commence upon the expiration of confinement. Carter, J. copies issued
03-04 75	ANGELO BERTOLOTTI- Filed Judgment # [illegible] The defendant is hereby committed to the custody of the Atty. Gen'l or his authorized representative for a period of FIVE (5) YEARS, and the defendant is FINED $5,000 Fine is to be paid or the defendant is to stand committed Bail pending appeal is continued in the sum of $75,000. Pursuant to the provisions of Title 21, US Code, Sec. 841, the defendant is placed on special parole for a period of THREE (3) YEARS to commence upon expiration of confinement. - Carter, J. copies issued.
03-04 75	ERNEST CORALUZZO - Filed Judgment # [illegible] The defendant is hereby committed to the custody of the Atty Gen'l or his authorized representative for imprisonment for a period of EIGHT (8) YEARS, and the defendant is FINED $20,000. Fine is to be paid or the defendant is to stand committed. Pursuant to the provisions of Title 21, US Code, Sec 841, the defendant is placed on special parole for a period of THREE (3) YEARS to commence upon the expiration of Federal confinement - Carter, J. copies issued
03 04 75	GERALD RUBIN a/k/a Jerry - Filed Judgment that the defendant is hereby committed to the custody of the Atty. Gen'l or his authorized representative for imprisonment for a period of FIVE (5) YEARS, to run concurrently with sentence defendant is presently serving in a State Prison. Pursuant to the provisions of Title 21, US Code, Sec 841, the defendant is placed on special parole for a period of THREE (3) YEARS to commence upon the expiration of Federal confinement - Carter, J copies issued.
[illegible]	Final Transcript of record of proceedings, dated Jan - 75
13-06-75	Final Transcript of record of proceedings, dated Jan 6, 7-25 (also 77-63
06-75	Final Transcript of record of proceedings, dated Jan 15, 16, 17, 20, 21-197
06-75	Final Transcript of record of proceedings, dated Jan 22, 23, 24, 27, 1975 (
06-75	Final Transcript of record of proceedings, dated Jan 28, 29, 30, 1975 (
[illegible]	[illegible]

ONLY COPY AVAILABLE

DATE	PROCEEDINGS	Date Judgm
03-05-75	Filed Pltffs. Affidavit in opposition to the motions of the defts James Capatorto & Raymond Thompson, to set aside the verdict of the jury & for the entry of a judgment of acquittal or for a new trial.	
03-05-75	JAMES CAPOTORTO & RAYMOND THOMPSON - Filed Memo. End. on motion dtd 2/14/75 for a new trial. Motion denied. So Ordered Carter J (mailed notice)	
03-04-75	JAMES MICHAEL CAPOTORTO - Filed Order of Substitution of Counsel that Gilbert Epstein be substituted as counsel for Alan Weinstein of 420 Lincoln Road Miami Beach, Fla. on behalf of dft. Carter J.	
03-13-75	JAMES MICHAEL CAPOTORTO--Filed defts. notice of appeal to the USCA from the judgment of convictiner entered on March 4, 1975. (copy mailed to U.S. Attys. Office and to deft. at 3831 N.E. 12th Terrace, Pompano Beach, Florida)	
03-11-75	ANGELO BERTOLOTTI--Filed deft. notice of appeal to the USCA from the judgment of conviction entered on March 4, 1975. (copy mailed to U. S. Attys. Office and to deft. at 313 N.E. 2nd Court, Dania, Florida)	
03-13-75	JOSEPH CAMPERLINGO--Filed defts. notice of appeal to the USCA from the judgment of conviction rendered on March 4, 1975. (Copies mailed toU.S. Atty.s. Office and to deft. at 320 Palm St., Hollywood, Florida 33020)	
03-20-75	JAMES ANGLEY--FILED JUDGMENT # 75,261 (atty. Murray Richman, present) the deft. is hereby committed to the custoyd of the Atty. General or his authorized representative for imprisonment for a period ofFIVE(5) YEARS, and the deft. is fined $5,000, the fine is to be paid or the deft. is to stand committed. Pursuant to the provisions ofTitle 21, USC 841, the deft. is placed on special parole for a period of THREE(3) YEARS to commence upon expiration of confinement. Bail pending appeal is contd., in theamt. of $10,000 cash or surety bond. Deft. advised of his right to appeal. Carter, J. (copies issued)	
03-20-75	LOUIS GUERRA--FILED JUDGMENT# 75,260 (atty. Gerald Lefcourt, present) the deft. is hereby committed to the custoyd of the Atty. General or his authorized representative for imprisonment for a period of FIVE(5) YEARS, and the deft. is fined $5,000, the fine is to be paid or the deft. is to stand committed. Pursuant to the provisions of Title, 21, USC 841, the deft. is placed on special parole for a period of THREE(3) YEARS, to commence upon expiration of confinement. Bail pending appeal is contd. in the amt. of $50,000 PRB secured by $5,000 cash. Deft. advised of his right to appeal. Carter, J. (copies issued) (cont'd)	

DATE	PROCEEDINGS
03-20-75	JOSEPH DE LUCA--FILED JUDGMENT # 75,259 (atty. Micahel Weinstein, present)the deft. is hereby committed to the custody of the atty. al or his authorized representative for imprisonment for a perio of FIVE(5) YEARS, and the deft. is fined $5,000, the fine is to paid or the deft. is to stand committed. Pursuant to the provis of Title 21, USC 841, the deft. is placed on special parole for period of THREE(3) YEARS to commence upon expiration of confinem Bail pending appeal is contd. in the amt. of $20,000 cash or sure bond. Deft. advised of his right to appeal. Carter,J.(copies iss (as to ct. 1)
01-06-75	ALBERT ROSSI,JR--deft. pleads GUILTY to ct. 1. P.S.R. ordered. Sentence adj. without date. Bail contd. as fixed on indictment on 73 CR 1138 at $25,000,cash. Carter,J.
03-26-75	ROBERT BROWNING--sentence adj. to May 2,1975 at 10am. Carter,J
03-21-75	JOSEPH DE LUCA---Filed memo end. on defts. motion dated Feb.14,1975 to dismiss indictment;arrest judgment,etc---Motion deneid. Carter,J. m/n
3/24/75	J. Ruiz, Filed commitment & entered return, Deft. delivered to Bx. Ho. for Def. on 3/26/75
3/24/75	Ernest Corallozzo - Filed commitment & entered return, Deft. delivered to Bx. Ho. for Def. on
03-24-75	Filed govts. affdt. of James P. Lavin in opposition to the various motions by defts.DE LUCA,ANGLEY AND GUERRA for the dismissal of indictments,etc.
03-21-75	LOUIS GUERA- Filed memo end. on defts. motion dated Feb.19,1975 for a new trial,etc.---Motion denied. So ordered,Carter,J. m/
03-21-75	JAMES ANGLEY--Filed memo end. on defts. motion dated Feb.13,1975 for dismissing indictment,etc.---Motion denied. So ordered, Carter,J. m/n
03-25-75	JOSEPH DE LUCA--Filed defts. notice of appeal to the USCA from the final judgment entered on March 20,1975.(copies mailed to AUSA).
03-24-75	RAYMOND THOMPSON--Filed defts. notice of appeal to the USCAfrom t final judgment entered on March 4,1975.(copy mailed to the A
03-28-75	LOUIS GUERRA--Filed defts. notice of appeal to the USCA from the final judmgnet entered on March 20,1975.(copies mailed to the and to the deft. at 2429 Yates Ave,Bx,NY)
03-27-75	JAMES ANGLEY--Filed defts. notice of appeal to the USCA from the final judmgnet entered on March 20,1975.(copies mailed to the and to deft. at 1500 Noble Ave,Bx,NY)

DATE	PROCEEDINGS
Apr 4-75	Filed stipulation that all papers under case # 74 Cr. 620 be transmitte to USCA as part of the record on appeal of this action.
04-07-75	RAYMOND THOMPSON--Filed order--ORDERED that pursuant to FRAP Rule 4(a) there was excusable neglect in the late filing of defts. notice of appeal and said notice of appeal is hereby accepted as valid in all respects by this court. So ordered, Carter,J. m/
04-08-75	JAMES ANGLEY--Filed defts. affdt. and notice of motion for an order appointing cournsel pursuant to the CJA Act in his appeal from a conviction,ret. on: date to be fixed by court.
04-03-75	RAYMOND THOMPSON--Filed order--ORDERED thatPeter Baraban is substitute as defts. atty. in lieu of Alan Weinstein for the sentencing on March 4,1975. So ordered, Carter,J. m/n

D.C. Form No. 100

CRIMINAL DOCKET

— JUDGE CARTER 74 CRIM. 620

UNITED STATES OF AMERICA

-v-

1 ERNEST CORALUZZO, a/k/a Jake,-1 & 2
2 ALBERT ROSSI, JR.,-1
3 JOSEPH DeLUCA, -1&2
4 JAMES ANGLEY, -1
5 ROBERT BROWNING, a/k/a Bobby Gooch,-1&2
6 FRANKLIN FLYNN,-1
7 ROGER SILVERIO, a/k/a Ricky, a/k/a Doug,-1
8 ANGELO IACONO, -1
9 JAMES CAPOTORTO, -1
10 JOSEPH CAMPERLINGO,-1
11 RAYMOND THOMPSON, -1
12 ANGELO BERTOLOTTI,-1
13 GENE BIEBENS, -1
14 VINCENT ARTUSO, -1&3
15 STEVE CEREA, -1&3
16 JOSEPH LEPORE, -1&5
17 LOUIS LEPORE, -1&2
18 JERRY RUBIN, -1
19 CHARLES GUIDA, a/k/a Charlie Chase, -1
20 PETER COSME, a/k/a Inky,-1&7
21 PHILLIP CIMMINO, a/k/a Philly Rags,-1,5
22 ANTHONY DePASQUA, a/k/a Boots, -1,5&6
23 THOMAS VASTA, -1
24 MARIA MARRERO, -1&8
25 SUE SHERMAN, -1
26 MARILYN GRECO, -1
27 LOUIS GUERRA, -1&4
28 ANITA CORALUZZO, -1
29 CATHY SPANGLER, and-1
30 NATHANIEL ARNOLD, a/k/a Willie Lump Lump-1&9

ATTORNEYS
For U.S.: James P. Lavin, AUSA, 264-6347
For Defendant: see separate appearance sheet

CASH RECEIVED AND DISBURSED

NAME	RECEIVED	DISBURSED
3/25/75 Weinstein	5 —	
3/27/75 Treas		5 —

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By

DATE	PROCEEDINGS
	21:846 Consp. to viol. Fed. Narcotic Laws.(Ct.1)
	21:812,841(a)(1),(b). Distr. & possess. with intent to distr.Cocaine,II.(Cts.2-9)
6-18-74	Filed indictment. Ordered Sealed. Knapp, J. B/W ordered & issued.
6-19-74	Indictment ordered unsealed. Knapp,J.
	Bail fixed by the Court on 6/18/74 as to the following defendants.
	F. Flynn in the amount of $250,000.
	Capotorto in the amount $100,000.
	Caperlingo in the amount $100,000.
	Bertolotti in the amount of $75,000.
	(Over)

74 CRIM 620 USA v. Coraluzzo, et. al. Judge Carter.

DATE	PROCEEDINGS APPEARANCE SHEET OF ATTORNEYS OF RECORD	notice of appearance filed by:
7- 8-74	for Steve Cerea:	Robert Keshner, 1930 Grand Concourse, Bronx, NY 878-1360
7- 8-74	for Ernest Coraluzzo and Anita Coraluzzo	Mathew Salko by Murray Richman (no address given)
7-8 -74	Phillip Cimmino	Goldberger, Feldman & Breitbart, 401 B'way NYC 10013 925-2105 and 431-4150
7- 8-74	Susan Sherman	Edward S. Panzer, 299 B'way, NYC 10007 349-6128
7- 8-74	JOSEPH DELUCA	Michael Weinstein, 149 E. 116th St., NYC 348-1005
7- 8-74	James Angley	Murray Richman, 1930 Grand Concourse, Bronx, NY 878-1360
7- 8-74	Jerry Rubin	Murray Richman, 1930 Grand Concourse, Bronx, NY 878-1360
7-11-74	James Capotorto, and Raymond Thompson	Alan E. Weinstein, by Abe Weinstein, 420 Lincoln Rd. Miami Beach, Florida (305)534-4666 local counsel:
7-11-74	Cathy Spangler	Peter E.K. Baraban, by Peter (Tel.305 891-5852) 12700 Biscayne Blvd., N. Miami, Fa. 33161 local counsel:
7-11-74	James Capotorta, Joseph Camperlingo Raymond Thompson and Angelo Bertolozzi	Jacob Kossman, 1325 Spruce St., Phila. Pa. 19107 215- Pe 5- 5084
11-27-74	JOSEPH LEPORE	Lefcfsky Gallina Mass & Hoffman 39 Broad Street, N.Y.10004 944-1550 (over)
01-06-75	Ernest Coraluzzo Anita Coraluzzo	Sanford Katz 299 Bdwy,NYC 10007 349-7755
01-07-75	ALBERT ROSSI,JR.	Daniel Riesel 425 Park Ave,NYC 10022 421-2150
02-06-75	ROBERT BRROWNING	Murray Richman 1930 Grand Concourse,Bronx,NY 878-1360
02-06-75	LOUIS GUERRA	Gerald Lefcourt 640 Bdwy,NYC 10012 677-1552
		(over)

D. C. 106 Criminal Continuation Sheet

RECORD notice of appearance filed by:

DATE	PROCEEDINGS	
	DEFT.	ATTY.
	JOSEPH LEPORE	William Richman 565 5th Ave, NYC 10017 986-1075
	ERNEST CORALUZZO ANITA CORALUZZO	Irving Anolik 225 Bdwy, NYC 10007 RE-2-305(

DATE	PROCEEDINGS	CLERK'S FEES PLAINTIFF	DEFEN
	continued from Pg. 1.		
	Spangler in the amount of $25,000.		
	Lacono in the amount of $35,000.		
	Silvers in the amount of $35,000.		
	Knapp,J.		
6-26-74	Maria Marrero: Filed affidavit in support of a motion to enlarge her bail limits to be extended to Miami, Fla.		
6-24-74	Adjourned to 7-1-74. Knapp,J.		
7-1-74	Ernest Caraluzzo, Deft. appears (Atty. Present) Deft. pleads N/g. Not Guilty. 15 days for motions, Bail continued as preiviously fixed by the Magistrate at $50,000 personal recognizance bond secured by $25,000 cash. Ward,J.		
7-1-74	Joseph DeLuca appears (Atty. Present) Deft. Pleads Not Guilty. 15 days for motions. Bail continued as previously fixed by the Magistrate at $20,000 cash or surety. Ward,J.		
7-1-74	James Angley appears, (Atty. Present). Deft pleads Not Guilty. 15 days for motions. Bail continued as previously fixed by the Magistrate at $10,000 cash or surety. WArd,J.		
7-1-74	Steve Cerea appears (Atty. Present). Deft. pleads Not Guilty. 15 days for motions. Bail continued as previously fixed by Magistrate at $25,000 Personal Recognizance Bond and $10,000 surety. Ward,J.		
7-1-74	Joseph Lepore (Atty. Present). Deft. pleads Not Guilty 15 days for motions. Deft. bail continued as previously fixed by the Magistrate at $15,000 Personal Recognizance Bond. Bail limits to include Eastern District. Ward,J.		
7-1-74	Phillip Cimmino (Atty. Present) Deft. pleads Not Guilty. 15 days for motions. Deft. bail continued as previosly fixed by the Magistrate at $50,000 cash. Ward,J.		
	(over)		

notice of appearance filed

JUDGE CARTER

PROCEEDINGS

7-1-74	Thomas Vasta- Deft. appears (Atty. Present). Deft. pleads Not Guilty. 15 days for motions. Deft. bail continued as previously fixed by the Magistrate at $25,000 Personal Recognizance Bond. Bail limits to Northern District, Delaware County and New Jersey. Ward,J.
7-1-74	Maria Marrero- Deft. appears (Atty. Present). Deft. pleads Not Guilty. 15 days for motions. Deft. bail continued as previously fixed by the Magistrate at $15,000 Personal Recognizance Bond. Ward,J.
7-1-74	Sue Sherman - Deft. appears (Atty. Present). Deft. pleads Not Guilty, 15 days for motions. Deft. bail continued as previously fixed by the Magistrate at $15,000 Personal Recognizance Bond. Ward,J.
7-1-74	Marilyn Greco- Adjourned to July 8, 1974. Ward,J.
7-1-74	Louis Guerra- Deft. appears (atty. Present). Deft. pleads Not Guilty, 15 days for motion. Bail continued as previously by the Magistrate at $50,000 Personal Recognizance Bond, secured by $5,000 cash. Ward,J.
7-1-74	Anita Coraluzzo- Deft. appears (Atty. Present). Deft pleads Not Guilty, 15 days for motion. Bail continued as previously fixed by Magistrate at $15,000 Personal Recognizance Bond. Ward,J.
7-1-74	Louis Lepore- Deft. appears (Atty. Present). Deft. pleads Not Guilty, 15 days for motion. Bail fixed at $50,000 personal Recognizance Bond. secured by$5,000 cash, co-signed by Mr. Vincent Laudage. Bail limits to include the Eastern District. Ward,J.
7-1-74	Gerald Rubin- Deft. appears (Atty. Present). Deft. pleads Not Guilty. 15 days for motion. Deft. bail fixed by Magistrate at $10,000 cash. Ward,J.
7- 3-74	PETER COSME- Filed Governments affdvt. for a writ of H/C - writ issued - ret. 7-8-74.
7-8-74	GENE BIDDENS- (no Atty. present) Court directs entry of not guilty plea. Bail fixed by Magistrate in the sum of 40,000. P.R.B. secured by $4,000. cash.
7-8-74	MARILYN GRECO- (no Atty. present) Court directs entry of not guilty plea. Bail fixed by Magistrate at $20,000. P.R.B. continued.
7-8-74	PETER COSME- not present (no Atty. present) Court directs entry of not guilty plea (deft. Jail) no bail set.
7-8-74	ROBERT BROWNING- not present (no Atty. present) Court directs entry of not guilty plea (deft. Jail) no bail set.
7-8-74	NATHANIEL ARNOLD- nor present (no Atty. present) Court directs entry of not guilty plea (Deft. Jail) no bail set.
7-8-74	CATHY SPANGLER - (Atty. present) Deft. pleads not guilty. Bail as fixed by Magistrate in Florida at $5,000. continued.

----over----

R

PROCEEDINGS

7- 8-74	JOSEPH CAMPERLINGO- Deft. (Atty. present) pleads not guilty. Bail continued as fixed by Magistrate in Florida at $25,000.00. Travel limits extended to include Florida.
7- 8-74	RAYMOND THOMPSON- Deft. (Atty. present) pleads not guilty. Bail as fixed by Magistrate in Florida at $100,000. cash - sec. continue Travel limit to include Florida
7- 8-74	ANGELO BERTOLOTTI- Deft. (Atty. present) pleads not guilty. Bail continued as fixed by Magistrate in Florida at $10,000 cash sec. Travel extended to include Florida. --- Ward, J.
7-10-74	JOSEPH LEPORE and LOUIS LEPORE- Filed defts' affdvt. and notice of motion to compel production of documents as indicated.
7-12-74	NATHANIEL ARNOLD - Filed Affidavit for W/H/C AD Prosequendam.
7-12-74	ROBERT BROWNING - Filed Affidavit for Writ of Habeas Corpus ad Prosequendum
7-12-74	PHILLIP CIMMINO - Filed Notice of Motion returnable 7/25/74 at 10 AM, for an ord directing U.S.Atty. to serve and file a bill of particulars; for an order dir the suppression of all evidence unconstitutionally obtained etc.
7-15-74	Received from S.D.of Florida the following - Magistrates Proceedings: Appearance $10,000, $50,000. $5,000, $1000,000., $25,000
7-17-74	MARIA MARRERO - Filed Notice of Motion, deft. seeks an order to dismiss the wit Ind. purs. to Rule 12(b)(2) of F.R.C.P.etc.
7-19-74	SUE SHERMAN - Filed Order - extending bail limits to include SDNY and State of F ordered - that except for provisions of the foregoing paragraph, deft. shall by and comply with all terms and provisions of her bail bond, and deft shall depart from SDNY and State of Florida-and further ordered that deft. shall re to SDNY within 24 hrs. of receipt by her atty. - Carter,J.
7-22-74	ROBERT BROWNING - Deft. produced on writ (no atty.) Court enters a plea of Not Gu Court fixed bail at $20,000 P.R.B. Remand in lieu of Bail.
7-22-74	NATHANIEL ARNOLD - Deft. produced on a writ (no atty.) Court enters a plea of Not
7-22-74	CHARLES GUIDA - Deft. produced on a writ(no atty.) Court enters a plea of Not Gui Bail fixed at $20,000 P.R.B. - Remand in lieu of bail - DUFFY,J.
7-25-74	ALBERT ROSSI - Deft. present (no atty.) Court directs a plea of Not Guilty be ent Deft. ROR - Duffy, J.
7-24-74	SUSAN SHERMAN - Filed Financial Affidavit.
7-26-74	THOMAS VASTA - Filed Notice of Motion for discovery and inspection, returnable 8/7/ at 9:30 A.M.
7-26-74	THOMAS VASTA - Filed Notice of Motion to suppress evidence illegal search and seizu returnable 8/7/74 at 9:30 A.M.
7-26-74	THOMAS VASTA - Filed Notice of Motion to sever prusuant to Rules 8(b) and 14 - returnable 8/7/74 at 9:30 A.M.

A24 (next page)

Judge Carter

Bill of Appearance filed by:

[redacted] Grand Concourse, Bronx, NY

[redacted]ZZO et al. 74 Cr. 620 CARTER,J.

Page 1

	PROCEEDINGS
7-26-74	THOMAS VASTA - Filed Notice of Motion for Bill of Particulars, returnable 8/7/74 at 9:30 A.M.
7-29-74	C.POMORTO & THOMPSON - Filed Notice of Motion to dismiss the Indict.
8-2-74	CATHERINE DE LUCA and CARTOLETTI- Filed affdvt. and notice of motion of deft for severance - ret. 8-16-74
8-2-74	C.CATHERINE DE LUCA and CARTOLETTI- Filed affdvt. and notice of motion of deft for a bill of particulars - ret. 8-16-74
8-2-74	CATHERINE DE LUCA and CARTOLETTI- Filed affdvt. and notice of motion of deft for discovery and inspection - ret. 8-16-74
8-6-74	CATHY SPANGLER- Filed deft's notice to suppress,
8-6-74	CATHY SPANGLER- Filed deft's memorandum in support of above motion.
8-6-74	CATHY SPANGLER- Filed deft's motion for severance and affdvt. in suppo
8-6-74	CATHY SPANGLER- Filed deft's memorandum in support of above motion.
8-6-74	CATHY SPANGLER- Filed deft's motion for discovery & inspection.
8-6-74	CATHY SPANGLER- Filed deft's memorandum in support of above motion.
8-8-74	CATHY SPANGLER- Filed deft's motion to dismiss
8-8-74	CATHY SPANGLER- Filed deft's memorandum in support of above motion.
8-8-74	CATHY SPANGLER- Filed deft's motion for production of all favorable evidence with memorandum of authorities.
8-8-74	CATHY SPANGLER- Filed deft's motion to adopt all motions filed by all co-defendants.
8-8-74	CATHY SPANGLER- Filed deft's motion to disclose with memorandum of authorities.
8-8-74	CATHY SPANGLER- Filed deft's motion for a bill of particulars
8-8-74	CATHY SPANGLER- Filed deft's memorandum of law in support of motion for a bill of particulars.
8-8-74	CATHY SPANGLER- Filed deft's memorandum of law concerning the constitutionality of Title 21, U.S. Code, Sec. 846
8-8-74	CATHY SPANGLER- Filed deft's motion to transcribe Grand Jury minutes.
8-8-74	CATHY SPANGLER- Filed deft's motion for disclosure of informers.
8-8-74	CATHY SPANGLER- Filed deft's motion for Government Agents to retain notes, etc. and memorandum of authorities.
8-8-74	CATHY SPANGLER- Filed deft's motion concerning sources of evidence with memorandum of authorities.
8-15-74	CATHERINE DE LUCA- Filed deft's affdvt. and notice of motion for a bill of particulars - ret. 8-29-74

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-over-

D. C. 109 Criminal Continuation Sheet

Judge Carter.
notice of appearance filed by:

Judge Carter

PROCEEDINGS

7/74	ROBERT BROWNING- Filed remand dated 7-22-74
7-3-74	ROBERT BROWNING - Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum
7-9-74	ROBERT BROWNING - Filed Writ w/Marshal's return unexecuted.
7-3-74	NATHANIEL ARNOLD - Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum
8-28-74	NATHANIEL ARNOLD - Filed Writ w/Marshal's return unexecuted.
Sep.18-74	ERNEST CORALUZZO ET AL - Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum.
Sep.27-74	Filed for Defts. Statement of Agreement and Disagreement regarding motions and Request for Rulings
Oct.1-74	CHARLES GUIDA/ Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum
10-2-74	COSME - Filed Notice of Appearance of Harold Schwartz, 16 Court St.,Suite 911,Brklyn,N
10-2-74	CORALUZZO - FILED the following documents received from Mag. Raby — Docket Entry She Indictment Warrant; Disposition Sheet; Appointments of Counsel; Notice of Appearan Appearance Bond; sum of $50,000.00 P.R.B. to be co-signed by deft's wife and proy deed posted; Final Commitment; Deft. Guerr'a Father's Aff. and att.s Aff. LEPORE-sum of $15,000.00 P.R.B.w/osecurity; post deed to property GRECO-s um of $20,000.00 w/o security DE LUCA- Sume of $35,000 P.R.B.-Public Mutual Ins. Co. SHERMAN- sum of $15,000 P.R.B. w/o security GUERRA - sum of $50,000 ANGLEY - sum of $10,000 - Public Mutual Ins. Co. CREA - sum of $25,000.00 - deft's father co-signer plus $10,000 Surety Bond-Public Mutual Ins. co. LEPORE - sum of $50000.00 - The Stuyvesant Ins. Co. CIMMINO - $25,000 - Public Mutual Service VASTA - Filed sum of $25,000. PRB w/o security BIVENS - Sum of $40,000. PRB secured w/4,000 cash CORALUZZO, Anita - sum of $15,000 w/o security RUBIN - sum of $10,000-Public Service Mutual Ins. Co. MARRERO - Sum of $15,000 w/o security.
10-2-74	FLYNN (et al.) - Filed the following documents received from Mag. Raby — Docket Entry Criminal Complaint; Magistrate's Warrant of Arrest.
10-11-74	CREA - Filed Notice of Motion returnable 10/31/74 at 10AM--Permitting use of Polygraph testimony upon the trial; Granting deft. a severance; Granting a pre-trial hearing; Granting a Bill of Particulars, Discovery and Inspection; and other further relief.
10-24-74	GRECO, MARILYN - Filed Notice of Motion, for an order requiring the Govt. to disclose any inducements promises or payments of any sort including promises of immunity or leniency made to any prospective Govt. witnesses, returnable 10/31/74 at 10AM
10-22-74	ROBERT BROWNING - Filed Writ of Habeas Corpus Ad Prosequendum w/marshal's return dtd. 10/2/74 - w/o further execution.
10-22-74	Filed Writ marked "Satisfied" - Weinfeld,J.

Docket Continuation

DATE	PROCEEDINGS	Date Judgm
11-1-74	Filed Motion to adopt all motions filed by all co-defendants.	
11-18-74	Filed Govt. Bill of Particulars.	
11-19-74	SUE SHERMAN - Filed Consent ORDER that the bail limits be hereby extended to include S.D.of New York and State of Ohio; further ordered except for the provisions of the foregoing paragraph the deft. shall abide and comply with all provisions of her bail bond executed on 6/19/74 and deft shall not depart from S.D.N.Y. and the State of Ohio and it is further Ordered, that deft shall return to S.D.N.Y. and appear before this Court within 24 hours of the receipt by her attorney. - CARTER,J. (m/n) Joseph Lepore	
11-27-74	Filed Defts./ Notice of Motion to withdraw as counsel and supporting Affidavits.	
12-3-74	Filed Deft. Crea's Notice of Motion returnable 12/17/74 at 10AM for the following relief: dismissal of indictment; granting inspection of Grand Jury minutes; Bill of Particulars; and for further relief.	
11-22-74	Webster Bivens,-(GENE BIBBENS ONDICT.)-(Filed as to U.S.Atty's. instructions) Notice of Motion for Severance, Dismissal of Indictment; Copy of Grand Jury minutes.	
12-3-74	Filed Transcript of record of proceedings, dated 12-3-74	
12-5-74	JAMES CAPOTORTO & RAYMOND THOMPSON - Filed-Motion for Continuance; Motion for discovery and inspection re: Wiretap; Motion to compel discovery; Motion to suppress intercepted communications; Renewed request for ruling on motions	
12-12-74	NATHANIEL ARNOLD - Filed Notice of Motion to sever, returnable 12/20/74	
12/12/74	NATHANIEL ARNOLD - Filed Notice of Motion to determine the mental competence of the accused	
12-16-74	CAPOTORTO & THOMPSON - Filed Renewed Motion for severance	
12-16-74	CREA - Defendant's Memorandum insupport of Motion.	
12-17-74	Filed Govt. Affidavit submitted in opposition to Deft. Steven Crea for dismissal of Indict, inspection of grand Jury minutes and for Bill of Particulars, etc.	
12-17-74	LOUIS GUERRA - Filed Govt. Affidavit submitted in opposition to deft's motion for dismissal of indictment, severance, continuance and further discovery.	
12-17-74	LOUIS GUERRA - Filed Memorandum of points and authorities in support of Deft's Omnibus Motion.	
12-17-74	CREA - Filed memo-endorsed on Motion dtd.12/3/74 -- Motion is in all respects denied So ordered - CARTER,J. (m/n)	
12-17-74	GUERRA - Filed Notice of Omnibus Motion , for order dismissing indictment etc.	
12-17-74	GUERRA - Filed memo-endorsed on motion dtd. 12/17/74 -- Motion in al respects is denied - So ordered CARTER,J.(m/n)	
12-17-74	Filed Affidavit for Writ of Habeas Corpus ad Testificandum	

DATE	PROCEEDINGS	D Ju
12-19-74	LEPORE - Filed Affidavit for Writ of Habeas Corpus Ad Prosequendum	
12-19-74	CIMINO - Filed Affidavit for Writ of Habeas Corpus AD Prosequendum.	
Dec.27-74	Filedf writ of habeas corpus to produce deft. NATHANIEL ARNOLD from Stormville,NY to this courthouse on July 22,1974. Writ satisfied on 10/7/74. Tenney,J.	
Dec.30-74	MARILYN GRECO----Filed defts. requests on voir dire.	
Dec.30-74	Filed govts. affdt. of James P. Lavin in oppsition to the motions of va defts. for suppression of the court-ordered Westchester County wire	
Dec.31-74	Filed govts. affdt. of James P. Lavin to produce deft. Robert Browning on a w/h/c . writ issued,ret. on: 1/6/75	
Dec.31-74	Filed govts. affdt. of James Lavin to produce deft. Charles Guida on a w/h/c. writ issued,ret. on:1/2/75	
Jan.2-75	Filed govts. affdt. of James P. Lavin to produce deft. Nathaniel Arnold ona w/h/c. writ issued,ret. on:1/6/75	
Jan.6-75	ERNEST CORALUZZO ANITA CORALUZZO--Filed notice of appearance for this deft. by: Sanford Katz,299 Bdwy,NYC 10007 349-7755	
01-07-75	ALBERT ROSSI----Filed notice of appearance that deft. is represented by: Daniel Riesel, 425 Park Ave,NYC 10022	
1-2-75	LOUIS LEPORE(atty. Cino Gallina present)--withdraws his plea of not guilty and pleads GUILTY to count 1 only. P.S.R. ordered. Sentnece adj. to Feb. 11,1975. Deft. produced on a w/h/c and marked satisfied. Carter,J.	
1-6-75	ERNEST CORALUZZO(atty. Irving Anolik present)-- withdraws his plea of not guilty and pleads GUILTY to counts 1 & 2. P.S.R. ordered. Sentence adj. to Feb. 10,1975 at 9:30am. Bail contd. $50,000 PRB secured by $25,000 cash. Carter, J.	
1-6-75	ROBERT BROWNING(Atty. Mark Landsman present)-- withdraws plea of not guilty and pleads GUILTY to count 1 only. P.S.R. ordered, Sentence adj. to Feb. 18,1975. Deft. having been produced on writ,writ satisfied. Carter,J.	
1-6-75	JERRY RUBIN--(atty. Murray Richman,present)--withdraws his plea of not guilty and pleads GUILTY to Count 1 only. P.S.R. Ordered. Bail contd. $10,000 cash. Sentence adj. to Feb. 20,1975. Carter,J.	
1-6-75	CHARLES GUIDA--(atty. Jerald Rosenthal present)--withdraws his plea of not guilty and pleads GUILTY to count 1 only. P.S.R. ordered. Sentence adj. to Feb. 13,1975 at 9:30am. Deft. produced on a writ. Writ satisfied.Carter,J.	

DATE	PROCEEDINGS	Date Judgm
1-6-75	Hearing begun as to defts. JAMES CAPORTORTO, ANITA CORALUZZO AND LOUIS GUERRA and concluded.	
1-7-75	PETER COSME is severed. Trial begun as to defts. JOSEPH DELUCA, JAMES ANGLEY, JAMES CAPOTORTO, RAYMOND THOMPSON, JAMES CAMPERLINGO, ANGELO BERTOLOTTI, WEBSTER EUGENE BIVENS, STEVEN CREA, JOSEPH LEPORE, THOMAS VASTA, MARIA MARRERO, SUSANNA SHERMAN, MARILYN CRECO, PHILLIP CIMINS, NATHANIEL ARNOLD, CATHY SPANGLER, ANITA CORALUZZ LOUIS GUERRA, superceeding indictment filed on Jan.6, 1975 and given # 75 CR 5.	
01-13-75	CHARLES GUIDA--filed govts. affdt. of T.Gorman Reilly for w/h/c to produce said deft. from the Mens HOuse of Det. on Riker's Island, writ issued, ret. on: 1/13/75	
01-13-75	CHARLES GUIDA--Filed govts. w/h/c, writ satisfied, Carter, J. on 1/6/75.	
01-13-75	ROBERT BROWNING--Filed w/h/c, writ satisfied on 1/6/75. Carter, J.	
01-17-75	LOUIS LEPORE--Filed order--ORDERED that deft. be allowed to attend the wake of his father at a time convenient for the incarceration authorities between Jan.8, 1975 and Jan.10, 1975 at the Romano Funeral Home, Whiteplains, Rd, Bronx, NY; ORDERED that Mr. Lepore be taken on Saturday morning, the 11th day of Jan.17, 1975 to the Church of the Immaculate Conception, Gunhill Rd, Bx, NY to attend the Mass and funeral of his father; ORDERED that Mr. Lepore be then taken to Woodlawn Cemetery to attend the funeral of his father. Carter, J. (consented to) (copy to marshal)	
02-07-75	LOUIS LEPORE--Filed govts. affdt. of T. Gorman Reilly to produce said deft. for sentencing on Feb.20, 1975 from the Clinton Correctional Facility, Dannemore, NY on above date to this court, in Rm.110. Writ issued, ret. on: Feb.20, 1975.	
	THE FOLLOWING WERE RECD. FROM CHAMBERS AFTER TRIAL:	
02-06-75	LOUIS GUERRA--Filed defts. memorandum of points and authorities for disclosure and suppression of electronic surveillance.	
02-06-75	LOUIS GUERRA--Filed defts. memorandum of law in support of motion to dismiss indictment.	
02-06-75	JAMES ANGLY ROBERT BROWNING STEVEN CREA JERRY RUBIN — Filed defts. affdt. and notice of motion to dismiss, for suppression, inspect grand jury minutes, etc., ret. on: date to be fixed by court.	
02-06-75	JOSEPH LEPORE--Filed defts. request to charge. (also for 75 CR 5)	
02-06-75	LOUIS GUERRA--Filed defts. memorandum of law in support of motion to dismiss due to unconstitutional classification of cocaine.	
2-06-75	LOUIS GUERRA--Filed defts. affdt. and notice of motion to dismiss ret. on: date to be fixed by court.	
02-06-75	SUE SHERMAN--Filed defts. affdt. and notice of motion for severance, etc. ret. on: date to be fixed by court.	

	PROCEEDINGS	Date Or Judgmen
2-06-75	ERNEST CORALUZZO } ANITA CORALUZZO } Filed defts. affdt. and notcie of motion to dismiss, etc.ret. on:date to be fixed by court.	
2-06-75	LOUIS GUERRA--Filed defts. affdt. and notice of motion for discovery and for suppression and for pre-trial hearing and to dismiss,ret.on: Aug. 21,1974.	
2-06-75	LOUIS GUERRA--Filed defts. affdt. and notice of motion for bill of particulars and discovery,ret. on: Aug. 21,1974.	
02-06-75	LOUIS GUERRA--Filed defts. memoranudm of law in support of motion for bibl of particulars and discovery.	
02-06-75	LOUIS GUERRA--Filed defts. affdt. and notice of motion for dismissal,ret on: Aug. 21,1974.	
2-14-75	ROBERT BROWNING--Filed govts. affdt. for w/h/c to produce said deft, ret. on: 2/18/75(writ issued)	
2-24-75	THOMPSON- Filed deft's memorandum and notice of motion to dismiss	
2-24-75	THOMPSON- Filed deft's memorandum and notice of motion for a new trial	
2-24-75	THOMPSON- Filed deft's memorandum and notice of motion for acquittal	
2-25-75	NATHANIEL ARNOLD- Filed writ of H/C - writ satisfied on 2-5-75 -- Frankel, J.	
2-25-75	PHILLIP CIMMINO- Filed writ of H/C - writ satisfied on 2-5-75 Frankel, J.	
2-28-75	SPANGLER- Filed deft's motion for judgment of aquittal	
2-28-75	SPANGLER- Filed memorandum of law in support of motion for judgment of aquittal.	
2-28-75	THOMPSON- Filed deft's motion for substitution of counsel for sentencing.	
3-06-75	*Filed Transcript of record of proceedings, dated* Jan 6,7-75 (filed in 75 Cr 5)	
3-06-75	*Filed Transcript of record of proceedings, dated* Jan 15,16,17,20,21-1975 (75 Cr	
3-06-75	*Filed Transcript of record of proceedings, dated* Jan 22,23,24,27,1975 (75	
3-06-75	*Filed Transcript of record of proceedings, dated* Jan 28,29,30,1975 (75	
3-06-75	*Filed Transcript of record of proceedings, dated* Jan 7,8,9,10,13,14-1975 (75	
03-05-75	RAYMOND THOMPSON - Filed Memo. End. on motion dtd. 2/24/75 for to arrest the judgment. Motion denied. Carter J. (mailed notice)	
3-05-75	RAYMOND THOMPSON Filed Memo. End. on motion dtd 2/24/75 Motion for a new trial Motion Denied Carter J (mailed notice)	
3-05-75	RAYMOND THOMPSON - Filed Memo. End. on motion dtd. 2/24/75 Motion for Judgment of Acquittal. Motion Denied. Carter J. (mailed notice)	

Cont'd p. 11

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...0 Rev. Civil Docket Continuation

TE	PROCEEDINGS	Date Order or Judgment Note
05-75	LEPORE- sentence adj. to 3-26-75 at 10 AM - writ adj to that date - Carter, J.	
26-75	LOUIS LEPORE--sentence adj. to April 2,1975 at 10am. Writ adjourned to that date. Carter,J.	
2-75	LOUIS LEPORE---Filed JUDGMENT # -- the deft. is hereby committed to the custody of the Atty. General or his authorized representative for imprisonment for a period of FIVE(5) YEARS on ct. 1, torun concurrently with the sentence imposed by the State. The deft. is FINED $5,000, fine is to be paid or the deft. is to stand committed. Pursuant to Title 21, USC 841, the deft. is placed on special parole for a period of THREE(3) YEARS to commence upon expiration of Federal confinement. ON defts. counsel's motion, ct. 2 is dismissed with the consent of the govt. It is recommended that the Atty. General pursuant to Title 18, USC Section 4082, arrange to have this sentence served concurrently with sentence deft. is presently serving at Dannemora Correctional Facility. Carter,J. (copies issued)	

V

D. C. 109 Criminal Continuation

WCR:jg
1-606

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- -x

UNITED STATES OF AMERICA,

- v -

ERNEST CORALLUZZO, a/k/a Jake,
ALBERT ROSSI, JR.,
JOSEPH DeLUCA,
JAMES ANGLEY,
ROBERT BROWNING, a/k/a Bobby Gooch, FRANKLIN FLYNN,
ROGER SILVERIO, a/k/a Ricky, a/k/a Doug, ANGELO IACONO,
JAMES CAPOTORTO,
JOSEPH CAMPERLINGO,
RAYMOND THOMPSON,
ANGELO BERTOLOTTI,
WEBSTER EUGENE BIVENS, a/k/a Gene,
VINCENT ARTUSO,
STEVEN CREA,
JOSEPH LEPORE,
GERALD RUBIN, a/k/a Jerry
CHARLES GUIDA, a/k/a Charlie Chase,
PETER COSME, a/k/a Inky,
PHILLIP CIMMINO, a/k/a Philly Rags,
ANTHONY DePASQUA, a/k/a Boots,
THOMAS VASTA,
MARIA MARRERO,
SUSANA SHERMAN,
MARILYN GRECO,
LOUIS GUERRA,
ANITA CORALLUZZO.
CATHY SPANGLER, and
NATHANIEL ARNOLD, a/k/a Willie Lump Lump,

Defendants.

- -x

U.S. DISTRICT COURT
FILED
JAN 6 1975
S. D. OF N. Y.

75 CRIM. 5

INDICTMENT

S 75 Cr.5

The Grand Jury charges:

From on or about the 1st day of January, 1973, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, ERNEST CORALLUZZO, ALBERT ROSSI, JOSEPH DeLUCA, JAMES ANGLEY, ROBERT BROWNING, a/k/a Bobby Gooch,

1

JAN 6 1975

FRANKLIN FLYNN, ROGER SILVERIO, a/k/a Ricky, a/k/a Doug, ANGELO IACONO, JAMES CAPOTORTO, JOSEPH CAMPERLINGO, RAYMOND THOMPSON, ANGELO BERTOLOTTI, WEBSTER EUGENE BIVENS, a/k/a Gene, VINCENT ANTUSO, STEVE CREA, JOSEPH LEPORE, GERALD RUBIN, a/k/a Jerry, CHARLES GUIDA, a/k/a Charley Chase, PETER COSME, a/k/a Inky, PHILLIP CIMMINO, a/k/a Philly Rags, ANTHONY DePASQUA, a/k/a Boots, THOMAS VASTA, MARIA MARRERO, SUSANA SHERMAN, MARILYN GRECO, LOUIS GUERRA, ANITA CORALUZZO, CATHY SPANGLER and NATHANIEL ARNOLD, a/k/a Willie Lump Lump, the defendants, and Louis Lepore and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about July, 1973, the defendants FRANKLIN FLYNN, ROGER SILVERIO, a/k/a Ricky, a/k/a Doug, ANGELO IACONO, and ALBERT ROSSI, JR., had a meeting in the Trojan Lounge, Miami, Florida to discuss the distribution of cocaine.

2. During July and August, 1973, the defendants ALBERT ROSSI, JR., JOSEPH CAMPERLINGO, ANGELO BERTOLOTTI, RAYMOND THOMPSON and JAMES CAPORTORTO met and discussed the purchase of multikilogram quantities of cocaine in Hollywood, Florida from defendants FRANK FLYNN, ROGER SILVERIO, a/k/a Ricky, a/k/a Doug and ANGELO IACONO.

3. On or about September 21, 1973, the defendant FRANKLIN FLYNN made a telephone call from the State of Florida to the Bronx, New York.

4. On or about September 22, 1973, the defendants ERNEST CORALLUZZO, a/k/a Jake, ALBERT BROWNING, a/k/a Bobby Cooch, JAMES ANSLEY, JOSEPH DeLUCA and ALBERT ROSSI, JR. travelled from the Bronx, New York to Fort Lauderdale, Florida.

5. On or about September 23, 1973, the defendants FRANKLIN FLYNN, ANGELO IACONI and ROGER SILVERIO, a/k/a Ricky, a/k/a Doug, brought approximately 12 kilograms of cocaine to the Hotel Diplomat in Hollywood, Florida.

6. On or about September 24, 1973, the defendants ERNEST CORALLUZZO, MARILYN GRECO, CATHY SPANGLER, and GERALD RUBIN, a/k/a Jerry, met at 113-115 Heights Drive, Yonkers, New York to test, re-package and store approximately 12 kilograms of cocaine.

7. During September 1973, the defendant ANITA CORALLUZZO transported approximately 10 fifteen ounce packages of cocaine to defendants ALBERT ROSSI, JR. and ERNEST CORALLUZZO, a/k/a Jake at Yonkers, New York.

8. In or about November, 1973, the defendant JOSEPH DeLUCA delivered approximately two kilograms of cocaine to the defendants VINCENT ARTUSO and STEVEN CREA.

9. In or about the month of October, 1973 the defendant LOUIS GUERRA received approximately one kilogram of cocaine.

10. In or about the month of October, 1973, the defendants ANTHONY DePASQUA and PHILLIP CIMMINO, a/k/a Philly Rags, negotiated for the purchase of one kilogram of cocaine.

11. In or about the month of October, 1973, the defendants CATHY SPANGLER and MARIA MARRERO removed approximately eleven pounds of cocaine from co-defendant MARILYN GRECO's house at 113-115 Heights Drive, Yonkers, New York.

12. On or about October 24, 1973, the defendant THOMAS VASTA negotiated for the purchase of approximately two kilograms of cocaine with defendant ALBERT ROSSI, JR., in the Bronx, New York.

13. During October or November, 1973, defendant SUSANA SHERMAN stored various quantities of cocaine in her apartment at New York, New York.

(Title 21, United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

On or about the 23rd day of September, 1973, in the Southern District of New York, ERNEST CORALLUZZO, a/k/a Jake, JOSEPH DeLUCA, and ROBERT BROWNING, a/k/a Bobby Gooch, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 12 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

THIRD COUNT

The Grand Jury further charges:

In or about the month of November, 1973, in the Southern District of New York, VINCENT ARTUSO and STEVEN CREA, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 2 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

FOURTH COUNT

The Grand Jury further charges:

In or about the month of October, 1973, in the Southern District of New York, LOUIS GUERRA, the defendant,

unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FIFTH COUNT

The Grand Jury further charges:

In or about the month of November, 1973, in the Southern District of New York, ANTHONY DePASQUA, a/k/a Boots, PHILLIP CIMMINO, a/k/a Philly Rags, and JOSEPH LEPORE, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 1 kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

SIXTH COUNT

The Grand Jury further charges:

During the month of November, 1973, in the Southern District of New York, ANTHONY DePASQUA, a/k/a Boots, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one-quarter of a kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

SEVENTH COUNT

The Grand Jury further charges:

In or about the month of October, 1973, in the Southern District of New York, PETER COSME, a/k/a Inky, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one-half of a kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

EIGHTH COUNT

The Grand Jury further charges:

In or about the month of November, 1973, in the Southern District of New York, MARIA MARRERO, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

NINTH COUNT

The Grand Jury further charges:

In or about the month of December, 1973, in the Southern District of New YOrk, NATHANIEL ARNOLD, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one-half of one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FOREMAN

PAUL J. CURRAN
United States Attorney

A TRUE COPY
RAYMOND F. BURGHARDT, CLERK

By _____
Deputy Clerk

ONLY COPY AVAILABLE

...1 ... Carter, P.S.R. ordered. Sentence ...ned to March 4, 1975. Bail cont'd at ...,000 P.R.B. secured by $5,000.

...endant Carmen Caputo, P.S.R. ordered. Sentence ...journed to March 4, 1975. Bail increased $50,000 ...rom previous bail fixed at $50,000 for a ...otal of $100,000. Defendant Remanded in lieu of bail

Defendant [illegible] P.S.R. ordered. Sentence ...djourned to March 4, 1975. Bail in the sum of $10,000 is increased to $75,000 and the Defendant ...s Remanded in lieu of bail. Bail limits same as before

Defendant [illegible] P.S.R. ordered. Sentence ...djourned to March 18, 1975. Bail in the sum of $25,000 is increased to $[illegible]3,000 and the Defendant ...s Remanded in lieu of bail. Bail limits same as before.

Defendant Raymond Thompson P.S.R. ordered. Sentence ...djourned to March 4, 1975. Defendant is Remanded ...thout bail.

...efendant [illegible] P.S.R. ordered. Sentence ...djourned to March 12, 1975. Bail cont'd in the ...mount of $20,000 cash or surety

...efendant Carmen Caputo P.S.R. ordered. Sentence ...djourned to March 18, 1975. Bail cont'd in the ...mount of $10,000 cash or surety

J. Carter, J.

...Hearing began as to DEFENDANTS ...Carmen Caputo Angelo ...Bertolotti on issue of accepting surety bonds. ...Bail bonds are subject to the approval of the ...rules office. DEFENDANT'S ...fixed in the sum of $100,000 cash or surety ...ond. Bail limits on all the above DEFENDANT'S ...to cover S.D.N.Y., E.D.N.Y. and S.D. of Fla ...Raymond Thompson is ordered to report to ...U.S. attorneys office in the S.D. of Fla for the ...purpose of signing in every week. Carter, J.

...1975 Charles Gallo a/k/a Charlie Chase (atty Gerald ...Stolper) ...[illegible] ...to the custody of the Atty Gen or ...[illegible] ...[illegible] ...[illegible]

75 CRIM. 5

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ERNEST CORALLUZZO, a/k/a Jake, et al.,

Defendants.

INDICTMENT

21 U.S.C. §§§ 846, 812, 841(a)(1) 841(b)(1)(A); 18 U.S.C. § 2

PAUL J. CURRAN

United States Attorney

A TRUE BILL

Foreman

FPI—8S—1-13-70—20M—4925

U.S. DISTRICT COURT FILED JAN 6 1975

JUDGE CARTER

JAN 6 1975 DEFENDANT Ernest Coralluzzo + (atty Irving Anolik present) Withdraws his plea of Not Guilty + Pleads Guilty to counts 1 + 2. P.S.R. ordered sentence adj. to Feb 11, 1975. DEFENDANT produced on a writ of habeas co and writ satisfied. ps

JAN 6 1975 DEFENDANT Robert Browning + (atty Mark Landsman present) Withdraws his plea of Not Guilty + Pleads Guilty to count 1 only. P.S. ordered. Sentence adj. to Feb 18, 1975. DE produced on a writ of habeas corpus and writ satisfied. ps

JAN 6 1975 DEFENDANT Jerry Rubin + (atty Murray Richman present) Withdraws his plea of N Guilty + Pleads Guilty to count 1 only P.S. ordered. Sentence adj. to Feb 20, 1975. DEFENDANT cont'd on bail fixed at $10,000 ca

JAN 6 1975 DEFENDANT Charles Guida (atty Jerald Rosenthal present) Withdraws his plea of No Guilty to count 1 only. P.S.R. ordered. Sente adj. to Feb 13, 1975. DEFENDANT produced on a of habeas corpus and writ satisfied. Cath

JAN 6 1975 Hearing begun as to DEFENDANT'S JAME Caponto, Anita Coralluzzo and Louis Gu and concluded. Decision Reserved. Cath

JAN 7 1975 DEFENDANT Peter Curcio is SEVERED Carter ps

JAN 7 1975 Trial begun with a jury as to the following DEFENDANT'S: James Angley, Dennis Camperlingo, Angelo Bertolotto

Phillip Timmons, Nathaniel
Anita Cummings,

Thomas Vaiz. The following DEFENDANT'S have all
plead plens of Not Guilty on this indictment before
Jones
ase proceeded to trial.

lay,
es Camperlingo + Angelo Bertolotti, Webster
gene Brown, Joseph Lepore,
Anita
thaniel Arnold,
allings,
All bail is contd on
as indictment as previously fixed on indictment
cr620. DEFENDANT'S
Nathaniel
rnold are remanded as previously fixed on
dictment 74cr620.

8 1975 Trial cont'd
9 1975 Trial cont'd
1975 Trial cont'd

1975 Trial cont'd
14 1975 Trial cont'd
1975 Trial cont'd
1975 Trial cont'd
17 1975 Trial cont'd
1975 Trial cont'd
1975 Trial cont'd
1975 Trial cont'd
1975 Trial cont'd
1975 Trial cont'd
1975 Trial cont'd
1975 Trial cont'd
1975 Trial cont'd + concluded Jury Verdict as to the
following DEFENDANT'S

VERDICT

	Not Guilty	Guilty
Joseph DeLuca		
Count 1	✓	
Count 2		✓

E. C. cont'd + concluded Jury Verdict as to the

DEFENDANT'S

V E R D I C T

	Not Guilty	Guilty
Joseph DeLuca		
Count 1		✓
Count 2	✓	
James Angley		
Count 1		✓
James Capotorto		
Count 1		✓
Joseph Camperlingo		
Count 1		✓
Raymond Thompson		
Count 1		✓
Angelo Bertolotti		
Count 1		✓
Webster Bivens		
Count 1	✓	
Steven Crea		
Count 1	✓	
Count 3	✓	

Verdict: (Continued) (2)	Not Guilty	Guilty
Joseph Lepore		
Count 1	✓	
Count 5	✓	
Phillip Cimmino		
Count 1	✓	
Count 5	✓	
Thomas Masta		
Count 1	✓	
Susana Sherman		
Count 1	✓	
Marilyn Greco		
Count 1	Mistrial →	
Louis Guerra		
Count 1		✓
Count 4	✓	
Anita Coralluzzo		
Count 1	✓	

JPL:rs

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

74 CRIM. 620

UNITED STATES OF AMERICA

-v-

ERNEST CORALUZZO, a/k/a Jake,
ALBERT ROSSI, JR.,
JOSEPH DeLUCA,
JAMES ANGLEY,
ROBERT BROWNING, a/k/a Bobby Gooch,
FRANKLIN FLYNN,
ROGER SILVERIO, a/k/a Ricky, a/k/a Doug,
ANGELO IACONO,
JAMES CAPOTORTO,
JOSEPH CAMPERLINGO,
RAYMOND THOMPSON,
ANGELO BERTOLOTTI,
GENE BIBBENS,
VINCENT ARTUSO,
STEVE CEREA,
JOSEPH LEPORE,
LOUIS LEPORE,
JERRY RUBIN,
CHARLES GUIDA, a/k/a Charlie Chase,
PETER COSME, a/k/a Inky,
PHILLIP CIMMINO, a/k/a Philly Rags,
ANTHONY DePASQUA, a/k/a Boots,
THOMAS VASTA,
MARIA MARRERO,
SUE SHERMAN,
MARILYN GRECO,
LOUIS GUERRA,
ANITA CORALUZZO,
CATHY SPANGLER, and
NATHANIEL ARNOLD, a/k/a Willie Lump Lump,

Defendants.

U.S. DISTRICT COURT FILED JUN 18 1974 S.D. OF N.Y.

INDICTMENT

S 74 Cr.

MICROFILM

A TRUE COPY
RAYMOND F. BURGHARDT, Clerk
By [signature]
Deputy Clerk

The Grand Jury charges:

From on or about the 1st day of January, 1973, and continuously thereafter up to and including the date of the filing of this indictment in the Southern District of New York and elsewhere, ERNEST CORALUZZO, ALBERT ROSSI, JOSEPH DeLUCA, JAMES ANGLEY, ROBERT BROWNING, a/k/a Bobby Gooch, FRANKLIN FLYNN, ROGER SILVERIO, a/k/a Ricky, a/k/a Doug, ANGELO IACONO, JAMES CAPOTORTO, JOSEPH CAMPERLINGO, RAYMOND THOMPSON, ANGELO BERTOLOTTI,

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JPL:rs

GENE BIBBENS, VINCENT ARTUSO, STEVE CEREA, JOSEPH LEPORE, LOUIS LEFORE, JERRY RUBIN, CHARLES GUIDA, a/k/a Charley Chase, PETER COSME, a/k/a Inky, PHILLIP CIMMINO, a/k/a Philly Rags, ANTHONY DePASQUA, a/k/a Boots, THOMAS VASTA, MARIA MARRERO, SUE SHERMAN, MARILYN GRECO, LOUIS GUERRA, ANITA CORALUZZO, CATHY SPANGLER, and NATHANIEL ARNOLD, a/k/a Willie Lump Lump, the defendants, and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

OVERT ACTS

In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

1. In or about July, 1973, the defendants FRANKLIN FLYNN, ROGER SILVERIO, a/k/a Ricky, a/k/a Doug, ANGELO IACONO and ALBERT ROSSI, JR., had a meeting in the Trojan Lounge, Miami, Florida to discuss the distribution of cocaine.

2. During July and August, 1973 the defendants ALBERT ROSSI, JR., JOSEPH CAMPERLINGO, ANGELO BERTOLOTTI, RAYMOND THOMPSON, and JAMES CAPOTORTO met and discussed the purchase of multikilogram quantities of cocaine in Hollywood, Florida from defendants FRANK FLYNN, ROGER SILVERIO, a/k/a Ricky, a/k/a Doug, and ANGELO IACONO.

JPL:rs

3. On or about September 21, 1973, the defendant FRANKLIN FLYNN made a telephone call from the State of Florida to the Bronx, New York.

4. On or about September 22, 1973, the defendants ERNEST CORALUZZO, a/k/a Jake, ROBERT BROWNING, a/k/a Bobby Gooch, LOUIS LEPORE, JAMES ANGLEY, JOSEPH DeLUCA and ALBERT ROSSI, JR. traveled from the Bronx, New York to Fort Lauderdale, Florida.

5. On or about September 23, 1973, the defendants FRANKLIN FLYNN, ANGELO IACONO and ROGER SILVERIO, a/k/a Ricky, a/k/a Doug, brought approximately 12 kilograms of cocaine to the Hotel Diplomat in Hollywood, Florida.

6. On or about September 24, 1973, the defendants ERNEST CORALUZZO, MARILYN GRECO, CATHY SPANGLER, and JERRY RUBIN met at 113-115 Heights Drive, Yonkers, New York to test, re-package and store approximately 12 kilograms of cocaine.

7. During September, 1973, the defendant ANITA CORALUZZO transported approximately 10 fifteen ounce packages of cocaine to defendants ALBERT ROSSI, JR. and ERNEST CORALUZZO, a/k/a Jake at Yonkers, New York.

8. In or about November, 1973, the defendant JOSEPH DeLUCA delivered approximately two kilograms of cocaine to the defendants VINCENT ARTUSO and STEVEN CEREA.

9. In or about the month of October, 1973 the defendant LOUIS GUERRA received approximately one kilogram of cocaine.

10. In or about the month of October, 1973, the defendants ANTHONY DePASQUA and PHILLIP CIMMINO, a/k/a Philly Rags, negotiated for the purchase of one kilogram of cocaine

11. In or about the month of October, 1973, the defendants CATHY SPANGLER and MARIA MARRERO removed approximately eleven pounds of cocaine from co-defendant MARILY GRECO's house at 113-115 Heights Drive, Yonkers, New York.

JPL:rs

12. On or about October 24, 1974, the defendant THOMAS VASTA negotiated for the purchase of approximately two kilograms of cocaine with defendant ALBERT ROSSI, JR. in the Bronx, New York.

13. During October or November, 1973, defendant LOUIS GUERRA received approximately one kilogram of cocaine in the Bronx, New York from defendant ALBERT ROSSI, JR.

14. During October or November, 1973 defendant SUE SHERMAN stored various quantities of cocaine in her apartment at New York, New York.

(Title 21, United States Code, Section 846.)

SECOND COUNT

The Grand Jury further charges:

On or about the 23rd day of September, 1973, in the Southern District of New York, ERNEST CORALUZZO, a/k/a Jake, JOSEPH DeLUCA, ROBERT BROWNING, a/k/a Bobby Gooch, and LOUIS LEPORE, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 12 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

THIRD COUNT

The Grand Jury further charges:

In or about the month of October, 1973, in the Southern District of New York, VINCENT ARTUSO and STEVE CEREA, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 2 kilograms of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

JPL:rs

FOURTH COUNT

The Grand Jury further charges:

In or about the month of November, 1973, in the Southern District of New York, LOUIS GUERRA, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

FIFTH COUNT

The Grand Jury further charges:

In or about the month of November, 1973, in the Southern District of New York, ANTHONY DePASQUA, a/k/a Boots, PHILLIP CIMMINO, a/k/a Philly Rags, and JOSEPH LEPORE, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 1 kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

SIXTH COUNT

The Grand Jury further charges:

During the month of October or November, 1973, in the Southern District of New York, ANTHONY DePASQUA, a/k/a Boots, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one-quarter of a kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

ONLY COPY AVAILABLE.

JPL:rs

SEVENTH COUNT

The Grand Jury further charges:

In or about the month of October, 1973, in the Southern District of New York, PETER COSME, a/k/a Inky, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one-half of a kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A).)

EIGHTH COUNT

The Grand Jury further charges:

In or about the month of November, 1973, in the Southern District of New York, MARIA MARRERO, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812, 841(a)(1) and 841(b)(1)(A) and Title 18, United States Code, Section 2.)

NINTH COUNT

The Grand Jury further charges:

In or about the month of December, 1973, in the Southern District of New York, NATHANIEL ARNOLD, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one-half of one kilogram of cocaine.

(Title 21, United States Code, Sections 821, 841(a)(1) and 841(b)(1)(A).)

/S/ PAUL J. CURRAN

/S/ EDWARD KUBRIGE

July 8 1974 - Deft. Cathy Spinoglio pres Catty Peter Bart (Bart not a pres). Deft pleads N/G. Bail cont as Fixed by Mag. in Fla at $5000.

July 8, 1974. Deft Joseph Campobasso pres Catty Jacob Kossman pres Deft. pleads N/G. Bail cont as Fixed by Mag. in Fla. at $25000. Extend Travel Limit to included Fla.

July 8 1974 Deft Raymond Thompson pres Catty Alan Weinstein Deft pleads N/G. Bail cont as Fixed by Mag in Fla. at $100,000 cash sec. Extend Travel Limit to included Fla. (Catty Jacob Kossman pres)

July 8, 1974 - Deft Angelo Bacco with pres. Catty Jacob Kossman pres Deft pleads N/G Bail cont as fixed by Mag in Fla. at $10,000 cash sec. Extended travel to included Fla.

July 22, 1974 - Deft pro se on a writ (Robert Browning pro se) (no atty) Court enters a plea of N/G. Court fixes Bail at $2,000 P.R.B. - remanded in lieu of Bail.

July 22, 1974. Deft pro se on a writ (Valdene Reed) pro se (no atty) Court enters a plea of N/G Court fixes a [redacted]

July 22, 1974 Deft pro se on a writ (Charles Funderburk pro se (no atty) Court enters a plea of N/G Court fixes a Bail at $2,000 P.R.B. remanded in lieu of Bail.

July 25, 1974 Deft Rossi present (no atty) Court directs a plea of N/G be entered

Deft R&R

Jan 2 1975 Deft Louis Lepore + (Atty Gino Gallina pres) Withdraws his plea of Not Guilty and Pleads Guilty to count 1 only. P.S.R. ordered sentence adj to February 11, 1975. Deft produced on a writ of habeas corpus and marked attached. pls Carter, J

JAN 6 1975 DEFENDANT ERNEST CORALUZZO (ATTY IRVING ANOLIK) Withdraws his plea of Not Guilty + Pleads Guilty to counts 1 + 2. P.S.R. ordered sentence adj to Feb 10 at 9:30. Bail cont'd $50,000 P.R.B. secured by $ Cash. pls

JAN 6 1975 DEFENDANT Robert Browning (atty Mark A. Landsman) Withdraws his plea of Not Guilty + Pleads Guilty to 1 only. P.S.R. ordered. Sentence adj to Feb 18, 1975. Deft having been produced on a writ. Writ satisfied

JAN 6 1975 DEFENDANT Jerry Rubin (atty Murray Richman) Withdraws his plea of Not Guilty + Pleads Guilty to 1 only. P.S.R. ordered. bail cont'd $10,000 adj to Feb 20 1975

JAN 6 1975 DEFENDANT Charles Guida (Atty Jerald Rosenth present) Withdraws his plea of ~~Not~~ Guilty + Ple Guilty to count 1 only. P.S.R. ordered. Sentence adj t Feb 13, 1975 at 9:30. Deft produced on a writ. Writ satisfied. Carter, J

JAN 6 1975 Hearing begun as to DEFENDANT James Capotorto, Anita Coraluzzo and Louis Guerra and concluded.

JAN 7 1975 DEFENDANT Peter Coome is severed. Trial begun as to DEFENDANT'S Joseph Delu James Angley, James Capotorto, Raymond Thomps James Camperlingo, Angelo Bertolotti, Webster Eug Bivens, Steven Crea, Joseph Lepore, Thomas Vas Maria Marrero, Susan [illegible] Marilyn Greco, Phillip Cimmino, Nathaniel Arnold, Cathy Spangler Anita Coraluzzo Louis Guerr Superseiding indictment filed January 6 1975 and given 75 cr 5.

MAR 5 - 1975 DEFENDANT Louis Lepore sentence adjourned t March 26, 1975 at 10 AM. writ adjourned to ~~that~~ date Carter, J

MAR 2 0 1975 DEFENDANT Louis Lepore sentence adjourned ~~to~~ April 2 1975 at 10 AM writ adjourned ~~to that~~ date Carter, J

APR 2 1975 DEFENDANT Louis Lepore + (Atty Gino Gallina) pres It is adjudged that the deft is hereby committed to the custody of the Atty Gen or his authorized Rep for imprisonment for a period of Five (5) Years on count 1, to run concurrently with sentence impos by the State. And the deft is fined $5,000 dolls fine is to be paid or the deft is to stand committe Pursuant to Title 21, U.S. Code Section 841, the deft is placed on Special Parole for a period of (3) Three Years to commence upon expiration of Federal imprisonment. On deft counsels motio count 2 is dismissed with the consent of the Court. Deft produced on a writ of Habeas Corpus Carter, writ satisfied.

July 1, 1974. Deft Joseph Lepore (atty G Galina present) Deft pleads N/G, 15 days for motions. Deft Bail cont. as prev. fixed by the Mag. at $5000 P.R.B. Bail limits to excluded Eastern Dist.
Ward J.

July 1. 1974. Deft Phillip Cimmino (atty P. Goldberg present, Deft Pleads N/G 15 days for motion. Deft Bail cont as pres fixed by the Mag. at $50.000 Cash.
Ward J.

July 1. 1974 Deft Thomas Vasta pre (atty H. Fenton pre) Dft pleads N/G 15 days for motion. Dft Bail cont as pres. fixed by the Mag at $25000 P.R.B. Bail limits to Eastern District of Delaware County & Jury
Ward J.

July 1. 1974. Maria Marrero pre (atty R. Leighton pre) Deft pleads N/G 15 days for motion. Deft Bail cont as prev. fixed by the Mag at $15,000 P.R.B.
Ward J.

July 1. 1974. Sue Sherman pre (atty E. Parye present) Deft pleads N/G. 15 days for motion. Bail cont as prev. fixed by the Mag at $15.000 P.R.B.
Ward J.

July 1. 1974. Marilyn Greco adj to July 8, 1974
Ward J.

July 2. 1974 Louis Lepore pre (atty G. Lefcourt present) Deft. pleads N/G. 15 days. Bail cont as pres. fixed by Mag at $50.000 P.R.B sec. by $5.000 cash
Ward J.

July 1. 1974. Anita Coralupo pre. (atty M. Galco present) Deft pleads N/G 15 days for motion. Bail cont as prev fixed by Mag at $5,000 P.R.B.
Ward J.

July 1. 1974. Louis Lepore pre (atty G. Galina pre) Deft. pleas N/G 15 days for motion Bail fixed at $50,000 P.R sec by $5,000 cash co-signed by Mr. Vincent Faudagio Bail limits to excluded the Eastern Dist.
Ward J.

July 1. 1974. Gerald Rubin pre (atty M. Richman pre) Deft pe N/G. 15 days motion. Deft Bail fixed by Mag at $10,000 cash
Ward J.

July 8, 1974 - Gene Biddons pre (NO ATTY PRE) court enters a plea of Guilty. Bail Fixed by mag. at $40,000 P.R.B sec by $4,000 C.

July 8, 1974 - Marilyn Greco pre (NO ATTY PRE) court enters a plea of G.
Bail Fixed by mag at $29,000 PRB (cont.)

July 8, 1974 Peter Cosmo Not pre (NO ATTY PRE) court enters pl
of N/G. Deft JAIL ON Writs. No Bail set

July 8, 1974 Robert Browning Not pre (NO ATTY PRE) court enter
plea of N/G Deft JAIL ON Writ. No Bail set.

[redacted]

74 CRIM 620

JUDGE CARTER

JUN 18 1974

Indictment ordered sealed.
Bail fixed as to all defts
Bail fixed as to dft Frankie Flynn
in the amt of $250,000
Bail fixed as to dft Jane Capotosto
in the amt of $100,000
Bail fixed as to dft Joseph Campolongo
in the amt of $100,000
Bail fixed as to dft Angelo Capotosto
in the amt of $75,000
Bail fixed as to dft Cathy Spangler
in the amt of $25,000
Bail fixed as to dfts Angelo Iacono
& Rose Schiano in the amt of $25,000
Kapp J

JUN 19 1974 Indictment ordered unsealed

Form No. USA-33s-274 (Ed. 9-25-58)

United States District Court

SOUTHERN DISTRICT OF NEW YORK

THE UNITED STATES OF AMERICA

vs.

ERNEST CORALUZZO, a/k/a Jake, et al.,

Defendants.

INDICTMENT

Violation of T. 21 U.S.C. §§ 846, 812, 841(a)(1) and 841(b)(1)(A) and T. 18 U.S.C. § 2.

PAUL J. CURRAN
United States Attorney.

A TRUE BILL.

Foreman.

U.S. DISTRICT COURT
FILED
JUN 18 1974

A52

gwa

charge the jury, those spectators desiring to leave the courtroom may do so now. All otehrs must remain seated until the completion of the court's charge.

CHARGE OF THE COURT

(Carter, J.)

THE COURT: Ladies and Gentlemen:

We now come to that part of the case where the evidence is in, the lawvers have presented their arguments, and you are about to exercise vour final role, which is to pass upon and to decide the fact issues that are in the case. You are the sole and exclusive judge of the facts. You pass upon the weight of the evidence. You determine the credibility of witnesses. You resolve such conflicts as there may be in the evidence and you draw such reasonable inferences as may be warranted by the testimony or exhibits in the case.

My function at this point is to instruct you as to the law that is applicable to the case. It is your duty to accept the law as I state it to you in these instructions and to apply it to the facts as vou find them. The logical result of that application is the verdict in the case.

I have permitted each of you to take notes

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. 7 4580

during the course of this trial. I expect you to use whatever notes you took merely as memory aids. They should not be allowed to take precedence over your independent memory of the facts. Morover, merely because a fellow juror may have memorialized in his or her notes something contrary to your recollection is not to be taken by you to mean that your memory is in error. It is your own recollection of the facts, and yours alone, which is controlling.

With respect to any fact matter, it is your recollection and yours alone that governs. Anything that counsel, either for the government or the defense may have said with respect to matters in evidence during the trial, in a question, in colloquy with the court, in argument, or in summation, is not to be substituted for your own recollection of the evidence.

So, too, anything the court may have said during the trial, or may refer to during the course of these instructions, as to any factual matter in evidence, is not to be taken in lieu of your own recollection. The case must be decided by you upon the sworn testimony of the witnesses and such exhibits as were received in evidence and any stipulation entered into among counsel.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

At times throughout this trial I have been called upon to make rulings upon various matters of law, as when a question put to a witness was objected to, or after a question was answered a motion was made to strike the answer, or the offer of a document was objected to.

I have sustained some objections and I have overruled others. I have received and rejected exhibits that were offered. It is essential in the performance of your duty that when anything was ordered strick from the record or rejected you put it out of your mind and disregard it. Similarly, if a question was asked and an objection to that question was sustained and no answer was given, the question itself should play no part in your consideration of the case. Please do not concern yourselves at all with my reasons for any of these rulings. These are purely legal matters.

Conferences at the bench were conducted at the request of the attorneys. As I have advised you, these conferences were solely on questions of law and are of no concern to you. You are not to draw any inferences against either side because of requests for such conferences or because such requests were denied.

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FOLEY SQUARE, NEW YORK, N.Y. CO 7-4580

I might add you are not to draw any inferences against either side or any counsel or any defendant because an objection was made and that objection was sustained or overruled.

In deciding this case you will be called upon to consider both direct and circumstantial evidence. It is well to explain now the difference between these two types of evidence.

Direct evidence is where a witness or a participant testified to what he saw, heard or observed, what he knows of his own knowledge, something which comes to him by virtue of his senses. A document can also contain direct evidence.

Circumstantial evidence is evidence of facts and circumstances from which one may infer connected facts which reasonably flow in the common experience of mankind. Stated somewhat differently, circumstantial evidence is evidence of facts from which other facts that are material in the lawsuit may be found by a process of inference.

Now let me give you an example that I believe has nothing to do with the facts in this case.

Suppose you had a material issue in some case as to whether John Doe was drinking alcoholic

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beverages on some particular night. A witness might take the stand and testify that he had given whiskey to John Doe and had seen him drinking it. That would be so-called direct evidence. If you believed the witness and thought he was able to record accurately, you could find from that direct evidence that John Doe had been drinking on the night in question.

You also might have a witness testify that he had seen John Doe enter a tavern and then had seem him leave the tavern a few hours later, walking and talking in ways that frankly suggested he was drunk. If you believed that witness and thought he was an accurate reporter you could find on the basis of that testimony that John Doe had been drinking on the night in question and that would be circumstantial evidence of that material fact in that hypothetical case.

Let me tell you for your purposes that there is no general rule of law and no general rule of good sense that places either of these two types of evidence, direct or circumstantial, in a general way on any higher or lower or different footing from the other. With respect to any evidence admitted into a trial record, whether it is direct or circumstantial, it is entitled to such weight and you are permitted to draw such

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reasonable inferences as your good judgment dictates in a particular case.

The weight and effect of any item or category of evidence depend not on whether it is to be categorized as direct or circumstantial, but on the concrete significance of that particular piece of evidence in its trial setting and upon its intrinsic credibility and persuasive power in the light of your observations of the witness, your own general experience of things and your reasonable analysis of the whole record.

Now, there are times when different inferences may be drawn from facts, whether they are proved by direct or circumstantial evidence. The government asks you to draw one set of inferences, while the defendants ask you to draw another. It is for you to decide, and for you alone, what inferences you will draw.

It is your function to determine the truth or falsity of the testimony of each witness. No inference as to the credibility of any witness should be drawn from the fact that upon occasion I have asked questions of a witness. My questions were only intended for clarification or to expedite matters. They were not intended to suggest any opinion as to the

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credibility of a witness who appeared before you.

Now how do you determine the truth and how do you appraise the credibility of the witness? Well, I think I told you when you were chosen and sat down, and I repeat, you use your own plain, everyday common sense.

The degree of credit to be given a witness should be determined by his or her demeanor here, his or her relationship to the controversy and to the parties, his or her bias or impartiality, the reasonableness of his statements, the strength or weakness of his recollection viewed in light of all other testimony and the attendant circumstances in the case.

You observed the witnesses. You heard their testimony. How did they strike you? Did their answers seem frank, open, truthful, candid? Or were they equivocal, deliberately confusing, or evasive. Or were they somewhere in between? How did each witness impress you? So you take each one, and on the basis of your own common sense and your everyday experience you determine whether or not you believe the witnesses and to what extent you believe them.

In passing upon the credibility of a witness you may also take into account whether there were

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material inconsistencies or contradictions within his or her own testimony; whether a witness changed his or her testimony; the extent to which he or she has been corroborated or contradicted by other credible evidence.

The testimony of a witness may fail to conform to the facts as they occurred because the witness is intentionally telling a falsehood, or because the witness did not accurately observe the events about which he testified, or because of recollection of what happened is at fault, or even because he has not expressed himself clearly in giving his testimony.

You are also entitled to consider the possibility that where a witness is called upon to testify long after the event inconsistencies may result from an innocent mistake or lapse of memory rather than from a deliberate attempt to falsify or change facts. It is not unusual for a witness in a lengthy proceeding to utter inconsistencies at some stage along the line.

If in your consideration of the evidence there appear to be differing versions of the facts, you will have to determine whether the apparent discrepancy in the evidence results from an understandable error which can be reconciled so that the two stories fall

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together rationally. If, however, you find this not to be appropriate or possible, you will then have to decide which version you will accept. You may accept so much of the testimony of a witness as you may deem true, and disregard the rest. You are at liberty, if you deem it appropriate, to disbelieve testimony in whole or in part, even though it is not otherwise contradicted or impeached.

Evidence of conviction in the past of certain crimes may be considered by you in determining that witness' worthiness of belief. You may consider whether the witness is a disinterested one or whether he is fostering some interest of his own in giving testimony.

An interested witness is not necessarily unworthy of belief. It is a factor, however, which you may consider in determining the weight and credibility to be given to that witness' testimony.

If you find that any witness has wilfully testified falsely to any material fact, you may disregard all his testimony or accept such part of it as you believe worthy of belief as it appeals to your reason or judgment.

A witness may be discredited by contradictory evidence, or by evidence that at other times the witness

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has made statements which are inconsistent with his or her testimony here. If you believe that any witness has been discredited in this manner, you may give the testimony of that witness whatever credibility, if any, you think it deserves.

The fact that the government is a party here and the prosecution is brought in the name of the United States of America entitles it to no greater consideration than that accorded to any other party to this litigation. By the same token, it is entitled to no less consideration.

This case should be considered and decided by you as an action between persons of equal standing in the community. All persons stand equal before the law and are to be dealt with as equals in a court of justice.

As I advised you at the start of this trial, the indictment is merely an accusation, a charge. It is not evidence or proof of a defendant's guilt. No inference of any kind may be drawn from the indictment.

The government has the burden of proving the guilt of a defendant beyond a reasonable doubt. It is a burden that never shifts and remains upon the government throughout the entire trial. A defendant

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does not have to prove his innocence. On the contrary,he is presumed to be innocent of the accusation contained in the indictment.

The presumption of innocence was in his favor at the start of the trial, continued in his favor throughout the trial, is in his favor even as I instruct you now. It remains in his favor during the course of your deliberations in the jury room.

It is removed only if and when you are satisfied that the government has sustained its burden of proving the guilt of a defendant beyond a reasonable doubt.

Now, what is a reasonable doubt? It is a doubt based on reason, which arises from the evidence or lack of evidence in the case. It is a doubt that a reasonable man or woman might entertain. It is not a fanciful or speculative doubt; it is not an imagined doubt; it is not a doubt that a juror might conjure up in order to avoid performing an unpleasant task or duty. It is not proof to an absolute certainty. Let me repeat -- it is a reasonable doubt. It is a doubt that appeals to your reason, to your judgment, your common understanding and your common sense, a doubt that would cause you to hesitate to act in matters of

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importance in your daily lives. On the other hand, the government does not have to prove the guilt of a defendant beyond all possible doubt or to a positive certainty. If that were the rule, few people, however guilty they might be, would be convicted. If, when you consider the evidence in this case, vou have a reasonabel doubt that the government has proved any element of the crime charged, then vou must return a verdict of acquittal. You may not return a guilty verdict simply because you feel that it is more likelv than not that the defendant committed the crime charged. A guilty verdict is only appropriate if each and every one of you is satisfied that the defendant's guilt has been proved beyond a reasonable doubt.

The indictment in this case contains nine counts or accusations. However, only six of these counts relate to one or more of the defendants on trial, and you are to consider only these six counts. Each of these six counts charges a separate offense or crime. Each must be considered separately.

The indictnames 29 defendants. Only 17 of these defendants are on trial before you. They are: Joseph De Luca, James Anglev, Raymond Thompson, James Capotorto, Angelo Bertolotti, Joseph Camperlingo,

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Webster Eugene Bivens, Steven Crea, Joseph Lepore, Thomas Vasta, Susana Sherman, Marilyn Greco, Phillip Cimmino, Nathaniel Arnold, Cathy Spangler, Anita Coralluzzo, and Louis Guerra.

These are the only persons whose guilt or innocence you must announce in your verdict, although as I will explain to you shortly, in considering their guilt or innocence you may have to determine the nature of the participation, if any, of the other named defendants. In the determination of innocence or guilt, you must bear in mind that guilt is personal. The guilt or innocence of the defendants on trial before you must be determined separately with respect to them solely on the evidence presented or the lack of evidence.

Many of the defendants named in the indictment are not on trial before you. You are not to speculate as to why any such individual is not on trial.

Neither Albert Rossi nor Maria Marrero is on trial here. Evidence has been adduced that both entered pleas of guilty to one or more charges. Those pleas are their personal statements of guilt. They are not indications that the other defendants on trial are guilty, and you are not to consider those pleas as evidence against any defendant on trial.

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In this case the indictment charges a number of different crimes against various combinations of the 17 defendants. It is your obligation to consider separately each of the individual charges or counts of the indictment and to decide whether as to each count the government has or has not sustained its burden of proving beyond a reasonable doubt the guilt of each defendant named in that particular count.

Let me now briefly summarize the charges in the indictment. The first count charges a conspiracy.

It charges that all the defendants named in the indictment, together and with others to the grand jury unknown and known, conspired to violate the federal narcotics laws. I shall refer to this count as the conspiracy count.

The remaining five counts in the indictment -- counts 2, 3, 4, 5 and 9 -- I shall refer to as the substantive counts. Each of the substantive counts charges one or more of the defendants with actually distributing and possessing with the intent to distribute varying amounts of cocaine. Each of the following defendants is named in one of the substantive counts: Joseph DeLuca (count 2); Steven Crea (count 3); Louis

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Guerra (count 4); Phillip Cimmino (count 5); Joseph Lepore (count 5); Nathaniel Arnold (count 9). Each of the substantive counts alleges that the defendant charged in that count violated Sections 841 and 812 of Title 21, United States Code. I will read and explain these statutory provisions to you later on.

In counts 2, 3 and 5, where more than one defendant is named, certain defendants are also charged with aiding and abetting the others in distributing narcotics.

However, as to count 5, I instruct you that the government charges Phillip Cimmino only as a principal and not as an aider and abettor.

A conspiracy to commit a crime is an entirely separate and distinct offense from the substantive crime which is the object of the conspiracy. In order to find a defendant guilty of conspiracy, there is no need to prove an actual violation of the narcotics laws.

Since the essential elements which the government must prove before a conviction may be had on any substantive count are different from the essential elements of the crime of conspiracy, we shall consider each separately. I believe it will be somewhat clearer for you if we discuss the substantive narcotics

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counts (counts 2, 3, 4, 5 and 9) first. Then we will consider the conspiracy count.

Counts 2, 3, 4, 5 and 9 charge several of the defendants with distribution or possession with the intent to distribute varying amounts of cocaine.

As I have said, each of these counts alleges that the defendant or defendants charged in that count violated Sections 841 and 812 of Title 21, United States Code. I will now explain these sections.

Section 841 provides in pertinent part:

" ... [I]t shall be unlawful for any person knowingly or intentionally ... to ... distribute ... or possess with intent to ... distribute ... a controlled substance ... "

The term "controlled substance" refers to any drug included in one of five schedules contained in Section 812 of Title 21. Heroin is included in Schedule I; cocaine is included in Schedule II.

The substantive counts, however, concern only cocaine. The conspiracy count, which I will explain to you in a moment, concerns both cocaine and heroin.

With respect to the charges of aiding and abetting in some of the substantive counts which I have already mentioned, Section 2 of Title 18, United States

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Code, provides in pertinent part:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, [is punishable as a principal]."

I shall now read counts 2, 3, 4, 5 and 9 to you. As you can see, that is not what you have so you will have to listen.

Count 2: "The Grand Jury further charges:

"On or about the 23rd day of September, 197e, in the Southern District of New York, Ernest Coralluzzo, also known as Jake, Joseph DeLuca, and Robert Browning, also known as Bobby Gooch, the defendants,unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 12 kilograms of cocaine."

Count 3: "The Grand Jury further charges:

"In or about the month of November, 1973, in the Southern District of New York, Vincent Artuso and Steven Crea, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately 2 kilograms of cocaine."

Count 4: "The Grand Jury further charges:

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"In or about the month of October, 1973, in the Southern District of New York, Louis Guerra, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one kilogram of cocaine."

Count 5: "The Grand Jury further charges:

"In or about the month of November, 1973, in the Southern District of New York, Anthony DePasqua, also known as Boots, Phillip Cimmino, also known as Philly Rags, and Joseph Lepore, the defendants, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one kilogram of cocaine."

Count 9: "The Grand Jury further charges:

"In or about the month of December, 1973, in the Southern District of New York, Nathaniel Arnold, the defendant, unlawfully, intentionally and knowingly did distribute and possess with intent to distribute a Schedule II controlled substance, to wit, approximately one-half of one kilogram of cocaine."

Now back on the text.

Before you may find any defendant named in

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any of these counts guilty of the crime charged in that count, you must be convinced that as to that particular defendant the government has proved each of the following elements beyond a reasonable doubt:

First, you must find beyond a reasonable doubt that the defendant whose guilt or innocence you are considering did distribute or possess with intent to distribute a narcotic drug controlled substance on or about the date indicated in the count concerning that defendant.

Second, you must also find beyond a reasonable doubt that the defendant you are considering committed the act of distributingor of possession with intent to distribute unlawfully, wilfully and knowingly.

Finally, with respect to each of the counts, you must find beyond a reasonable doubt that the substance alleged to have been distributed in that count was in fact a narcotic drug controlled substance.

I would like to say a few more words on each of these elements. You will recall that the first element of the offense is to "distribute or possess with intent to distribute" the drug. What does that phrase mean?

Well, the word "distribute" means to

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transfer or deliver (other than by administering or dispensing) the narcotic controlled substance. The word "possess," as used in the phrase "possess with the intent to distribute," has its everyday common meaning. That is, to have something within one's control. Someone with physical custody of an item would "possess" it within the meaning of this definition. You must find beyond a reasonable doubt that the defendant was aware of the presence of the substance he was charged with possessing and knew it was a controlled drug. The government is not required to prove both distribution and possession with intent to distribute. It is sufficient for the government to prove either.

As to the second element, that the defendant you are considering acted "unlawfully, wilfully and knowingly," I direct your attention to the terms "knowing" and "wilful." I will explain what they mean. You should keep these definitions in mind throughout this charge and your deliberations since they apply in connection with the conspiracy count as well.

Taking the definition of "knowingly" first, an act is done knowingly if it is done voluntarily and purposefully and not because of mistake, in advertence or other innocent reason.

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An act is wilful if is done knowingly, deliberately and with an evil purpose. An act is not done wilfully if it is done as a result of a mistake, carelessness, lack of an evil motive or purpose or for some other innocent reason.

It is not necessary for you to find that a defendant knew he was breaking a particular law and whether or not an act is knowing or wilful has nothing to do with a defendant's personal or private reasons for committing the act, so long as the act was done with an evil purpose.

Knowledge, wilfulness and intent exist in the mind. Since it is not possible to look into a man's mind to see what went on, the only way you have of arriving at a decision on these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge, wilfulness and intent were present at the time in question. In making this determination you should presume that a person intends the natural and probable consequence of his acts.

As to the third element, the government has charged in the substantive counts that the substances

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allegedly transferred were in fact narcotic-drug controlled substances. As I have indicated, the substantive counts mnetion only cocaine, not heroin. I charge you as a matter of law that cocaine is a Schedule II narcotic drug controlled substance. Just as with any other component of the crime, the existence of any dealing with narcotics may be proved by circumstantial evidence. There need be no sample placed before the jury nor need there be testimony by chemists as long as the jury finds that the evidence furnishes a basis for inferring that the substance in question was narcotics. You may consider the following evidence: the alleged secrecy and deviousness with which the transactions were handled, the alleged fact that the substance in which they were dealing was a white powder, the allegedly high prices allegedly paid for the substances, and the alleged lack of complaint on the part of the purchasers.

It is not necessary for the government to show that a particular defendant physically committed the crime himself. I have already read to you Section 2 of Title 18 of the United States Code and I will repeat it now:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces

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or procures its commission [is punishable as a principal]..."

Thus a person who aids and abets another to commit an offense is just as guilty of that offense as he would be had he committed it himself.

Now, before you can conclude that a person aided and abetted, you must first find that the substantive crime charged, in this case the distribution or possession with intent to distribute a controlled substance, was in fact committed. Secondly, you must determine that the defendant in some way associated himself with the criminal venture, that he participated in it as something he wished to bring about, and that by his actions he tried to make the crime succeed. You must find more than the defendant's mere presence during or knowledge of an offense.

The one who aids and abets another in the commission of a crime is equally guilty with the person who actually and physically commits it. Accordingly, you may find the defendants Joseph DeLuca, Steven Crea or Joseph Lepore guilty of the offenses charged in counts 2, 3 or 5 respectively if you find beyond a reasonable doubt that other named defendants committed the offenses with which they were charged in those counts and that Joseph DeLuca, Steven Crea or Joseph

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Lepore aided and abetted them.

If you find in count 2 beyond a reasonable doubt that Ernest Coralluzzo committed the offense charged -- the unlawful distribution of and possession with intent to distribute 12 kilograms of cocaine on or about the 23rd day of September, 1973 -- and that Joseph DeLuca aided and abetted him, then you may find Joseph DeLuca guilty.

If you find in count 3 beyond a reasonable doubt that Vincent Artuso committed the offense charged -- the unlawful distribution of and possession with intent to distribute 2 kilograms of cocaine during the month of November, 1973 -- and that Steven Crea aided and abetted him, then you may find Steven Crea guilty.

If you find in count 5 beyond a reasonable doubt that either Anthony DePasqua or Phillip Cimmino committed the offense charged -- the unlawful distribution of or possession with intent to distribute one kilogram of cocaine during November, 1973 -- and that Joseph Lepore aided and abetted them, then you may find Joseph Lepore guilty.

With respect to the substantive counts alone, an admission or incriminating out-of-court statement

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made by one defendant may not be considered as evidence against another defendant not present when the statement was made.

As I will instruct you later, a different rule applies with respect to the conspiracy count.

Now let us turn to count 1, the conspiracy charge. The first count of the indictment charges that all 17 of the defendants on trial violated Section 846 of Title 21, United States Code. That section makes it a crime for any person to conspire to violate the federal narcotics laws, including Section 841 which I explained to you in connection with the substantive counts.

I shall now read count 1 to you, except the alleged overt acts:

"From on or about the 1st day of January, 1973, and continuously thereafter up to and including the date of the filing of this indictment, in the Southern District of New York and elsewhere, Ernest Coralluzzo, Albert Rossi, Joseph Deluca, James Angley, Robert Browning, also known as Bobby Gooch, Franklin Flynn, Roger Silverio, also known as Ricky, also known as Doug, Angelo Iacono, James Capotorto, Joseph Camperlingo, Raymond Thompson, Angelo Bertolotti, Webster

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Eugene Bivens, also known as Gene, Vincent Artuso, Steve Crea, Joseph Lepore, Gerald Rubin, also known as Jerry, Charles Guida, also known as Charley Chase, Peter Cosme, also known as Inky, Phillip Cimmino, also known as Philly Rags, Anthony DePasqua, also known as Boots, Thomas Vasta, Maria Marrero, Susana Sherman, Marilyn Greco, Louis Guerra, Anita Coralluzzo, Cathy Spangler and National Arnold, also known as Willie Lump Lump, the defendants, and Louis Lepore and others to the Grand Jury known and unknown, unlawfully, intentionally and knowingly combined, conspired, confederated and agreed together and with each other to violate Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code.

"2. It was part of said conspiracy that the said defendants unlawfully, intentionally and knowingly would distribute and possess with intent to distribute Schedule I and II narcotic drug controlled substances the exact amount thereof being to the Grand Jury unknown in violation of Sections 812, 841(a)(1) and 841(b)(1)(A) of Title 21, United States Code."

In order to find any of the defendants guilty of a conspiracy, as charged in count 1, you must be satisfied that the government has proved the following

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elements beyond a reasonable doubt:

First: You must find the existence of the conspiracy charged in count 1. In this regard, you must find that some time between January 1, 1973, and the date of filing of this indictment, June 18, 1974, an agreement existed between all of the defendants on trial or between any two or more of them either to distribute or to possess with intent to distribute Schedule I and II narcotic controlled substances in violation of Sections 841 and 812 of Title 21.

In this regard, you need not find that the conspiracy existed for the entire mentioned in the indictment, or that the agreement was to accomplish all the objectives listed in the indictment. It is sufficient if it is shown that the agreements existed for any part of the time alleged, and that its purpose was either to distribute or possess with intent to distribute either Schedule I or Schedule II controlled substances. Also, as I shall explain in further detail later, you need not find that all the persons mentioned reached an agreement. An agreement between any two of the defendants or between any one defendant and another alleged co-conspirator is sufficient.

Second: That the defendant whose guilt or

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innocence you are considering knowingly and wilfully became a participant in the conspiracy with knowledge of its alleged criminal purpose.

"Third: That at least one of the alleged conspirators, not necessarily the defendant you are considering, knowingly committed at least one of the overt acts set forth in the indictment at or about the time and place alleged.

If the government fails to establish each of these three elements as to any of the defendants beyond a reasonable doubt, you must acquit those defendants as to whom the government has failed to establish any element on this count. If it succeeds as to a partiuclar defendant, your duty is to convict that defendant on this count.

As I have informed you, the first of the elements which you must find that the government has proved beyond a reasonable doubt is that the conspiracy charged in the indictment existed. First, I want to discuss with you what the term "conspiracy" means because that term is here used in a legal context and therefore has a somewhat different meaning than it has when it is used colloquially.

Now, what is a conspiracy? A conspiracy is

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a combination or agreement of two or more persons tc accomplish a criminal or unlawful purpose. The qist of the crimf of conspiracy is the unlawful combination or agreement to violate the law. Whether or not the defendants finally accomplished what it is alleged thev conspired to do is immaterial. That is to sav, the government is not obliged to prove that a purpose of the conspirators was attained.

It has often been said that a conspiracv is a partnership in crime in which each member becomes the agent of every other member. To establish a conspiracy, however, the government is not required to show that the alleged conspirators sat around a table and entered into a solemn compact, orallv or in writinq, statinq that they have formed a conspiracy to violate the law and settinq forth details of the plans. It is sufficient if two or more persons, in anv manner, through any contrivance, impliedlv or tacitly, come to a common understandinq to violate the law. Express language or specific words are not required to indicate assent or attachment to a conspiracy. On the other hand, mere similarity of conduct amonq various persons, and the fact that thev mav have associated with each other, and may have assembled together and discussed

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common aims and interests, does not necessarily establish proof of the existence of a conspiracy.

If, upon consideration of all the evidence, direct and circumstantial, testimonial and documentary, you find beyond a reasonable doubt that the minds of at least two of the alleged conspirators met in an understanding way and that they agreed, as I have explained a conspiratorial agreement to you, to work together in furtherance of the unlawful scheme alleged in the indictment, then proof of the existence of the conspiracy is satisfied.

It is contended here that the government has failed to prove the existence of only one alleged conspiracy but has proved several separate and independent alleged conspiracies involving various of the defendants.

Proof of such several separate and independent conspiracies is not proof of the single overall conspiracy as charged in the indictment, and if you find that the government has failed to prove the existence of only one overall conspiracy, you must find the defendants not guilty.

In determining whether there was a single overall conspiracy, you may consider what the evidence

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shows as to time, parties, or objects, and changes of personnel and activity. You may find a single conspiracy even though there were changes in personnel and activities, provided you find that some of the co-conspirators continued throughout the life of the alleged conspiracy, and that the purposes of the alleged conspiracy continued to be those charged in the indictment.

The fact that the parties are not always identical does not mean that there are separate conspiracies. In other words, if at all times the alleged conspiracy had the same overall primary purpose and the same nucleus of participants, the alleged conspiracy would be the same basic scheme even though in the course of its operation additional alleged conspirators joined in and performed functions to carry out the scheme while others were not active or had terminated their relationship.

On the other hand, if you find that one overall conspiracy terminated and another one was formed, you may not find a single conspiracy even though the purpose of both conspiracies were the same and that some of the defendants were members of both.

In the course of the trial I permitted

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certain testimony that some of the defendants on trial and others had engaged in transactions involving the purchase and sale of marijuana. This testimony was admitted as part of the government's evidence concerning the conspiracy charged in the indictment. If you believe the testimony about the marijuana transactions you may consider it in determining whether the conspiracy charged in the indictment existed.

That is to say, if you believe this testimony, you may consider it in determining whether there was an agreement or arrangement between two or more of these defendants to distribute illegal substances.

But I caution you, in this case the charge in count 1 is that the defendants conspired to distribute cocaine and heroin. As a result, you may not find a defendant guilty merely because he conspired to distribute only some other illicit substance, that is, marijuana.

No defendant may be convicted under count 1 unless you find beyond a reasonable doubt that he was a member of the conspiracy charged in count 1.

If you find that a conspiracy existed beyond a reasonable doubt, then you must consider the second

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element of the conspiracy count, that is, whether the government has established beyond a reasonable doubt that the defendant whose guilt or innocence you are considering knowingly and wilfully became a participant in the conspiracy with knowledge of its alleged criminal purpose.

You may not assume that a defendant joined a conspiracy simply because you are convinced that he knew or was associated or had other dealings with people who conspired to violate the law.

I charge you that mere association, even close and repeated association, with some other alleged member of the conspiracy is not sufficient, in and of itself, to support a finding that a defendant was a member of the alleged conspiracy. Nor may you infer that Joseph Lepore was a member solely from his relationship to one of the defendants or that Anita Coraluzzo was a member solely from the fact that she was married to and lived with Ernie Coraluzzo.

In addition, I instruct you that none of the following is sufficient, in and ot itself, to support a finding that a defendant was a member of the alleged conspiracy: mere attendance at a meeting with co-conspirators; or mere presence at the scene of the crime; or mere knowledge

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of conspiratorial acts or objectives.

The mere fact that two persons are on trial together cannot be considered in any way as indicating that they participated in a conspiracy to violate the law.

All of the conspirators need not be acquainted with each other. They may not have previously associated together. One of the defendants may know only one other member of the conspiracy, but if he enters into an unlawful agreement with that other member of the conspiracy, he becomes a party thereto.

To conclude that a defendant was a member of a conspiracy, you must find that he knew the unlawful purpose of the alleged conspiracy, that knowing the purpose he intentionally joined in the endeavor, and that he had an interest in making it succeed. It is not necessary, however, that you find that each conspirator was fully informed as to the details or the full scope of the conspiracy, or participated in every

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aspect of the conspiracy. A person becomes a member of the conspiracy by associating himself with a common plan or scheme, knowing the central aim or principal purpose of that common plan or scheme and intending to help bring about its success.

As is the case with every count of the indictment, in order to find a defendant guilty on the conspiracy count, you must find beyond a reasonable doubt that the defendant acted knowingly and wilfully. Specifically, you must find that the defendant knowingly and wilfully became a participant in the conspiracy with knowledge of its unlawful purpose. I have already explained the requirement of knowledge of unlawful purpose; and I defined for you the terms "knowingly" and "wilfully" in connection with the substantive counts. To repeat briefly, an act is done knowingly if it is done voluntarily and purposefully and not because of mistake, inadvertence or other innocent reason.

An act is wilful if it is done knowingly, deliberately and with an evil purpose. An act is not done wilfully if it is done as a result of a mistake, carelessness, lack of an evil motive or purpose or for some other innocent reason.

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I have already explained to you that knowledge, wilfulness and intent exist in the mind, and told you how you are to determine whether the requisite knowledge, wilfulness and intent were present at the time in question.

Once you have found the conspiracy to exist and a particular defendant to have knowingly and wilfully participated in it with knowledge of its unlawful purpose, the extent of his participation has no bearing on his guilt or innocence. The guilt of a conspirator is not measured by the extent or the duration of his participation. Even if he participated in it to a degree more limited than that of his co-conspirators, he is equally culpable so long as he was in fact a conspirator.

Now let me instruct you as to how you are to consider the acts and statements of alleged co-conspirators.

You will recall that throughout the trial the acts and statements of one alleged co-conspirator in the absence of other alleged co-conspirators were received only with respect to the particular person or persons making them.

If you find that a conspiracy existed, then

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in considering the second element, whether or not a particular defendant was a member of the conspiracy, you may rely not only on his own statements but on the statements and declarations of the other alleged co-conspirators.

Moreover, if you find that a conspiracy existed, then any act or declaration made during the conspiracy and in furtherance of it by a person found by you to have been a member of the conspiracy may be considered against any defendant whom you find was also a member, even though such act or declaration was made in the absence and without the knowledge of that defendant.

Conversely, such acts and declarations of a conspirator which were made before the existence or after the termination of the conspiracy may be considered only against the person who made them.

Let me add something that is obvious. If you conclude as to the defendants that the wiretap conversations you heard related to something else, that it had nothing to do with narcotics, as the defendants contend, then obviously these conversations cannot be considered by you as being in furtherance of the conspiracy alleged here.

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I must also give you a special instruction as to certain statements and acts by Albert Rossi. With respect to acts and statements by Rossi between November 17 or 18, 1973, the date he surrendered to Bronx County officials and January 25, 1974, the date he was finally taken into federal custody, you may consider such acts and statements against any defendant whom you find to have been a co-conspirator, provided such acts or statements were in furtherance of the conspiracy. However, you may not consider against any of the defendants any act or statement by Rossi after he was finally taken into federal custody on January 25, 1974.

Now we come to the third element you must consider as to count 1. If you have found that the alleged conspiracy existed and that the defendant whose guilt you are considering was a member of it, then you must consider the overt act requirement.

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1B The offense of conspiracy is complete when the unlawful agreement is made and any single overt act is done by one of thealleged conspirators in furtherance of the conspiracy.

By the term "overt act" we mean an act committed in an effort to accomplish some object or purpose of the conspiracy. The overt act in this sense need not be a crime in itself. It must, however, be an act which follows from the conspiracy and is directed toward accomplishment of the criminal purpose of the conspiracy. I will now read you the overt acts charged in the indictment. The indictment states that:

"In pursuance of said conspiracy and to effect the objects thereof, the following overt acts were committed in the Southern District of New York and elsewhere:

"1. In or about July, 1973, the defendants Franklin Flynn, Roger Silverio, a/k/a Rickey, a/k/a Doug, Angelo Iacono and Albert Rossi, Jr., had a meeting in the Trojan Lounge, Miami, Florida, to discuss the distribution of cocaine.

"2. During July and August, 1973, the defendants Albert Rossi, Jr., Joseph Camperlingo, Angelo Bertolotti, Raymond Thompson and James Capotorto met and discussed the purchase of multi-kilogram quantities of cocaine in

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Hollywood, Florida, from defendants Franklin Flynn, Roger Silverio, a/k/a Ricky, a/k/a Doug and Angelo Iacono.

"3. On or about September 21, 1973, the defendant Franklin Flynn made a telephone call from the State of Florida to the Bronx, New York.

"4. On or about September 22, 1973, the defendants Ernest Coralluzzo, a/k/a Jake, Robert Browning, a/k/a Bobby Gooch, James Angley, Joseph DeLuca and Albert Rossi, Jr., traveled from the Bronx, New York, to Fort Lauderdale, Florida.

"5. On or about September 23, 1973, the defendants Franklin Flynn, Angelo Iacono and Roger Silverio, a/k/a Ricky, a/k/a Doug, brought approximately 12 kilograms of cocaine to the Hotel Diplomat in Hollywood, Florida.

"6. On or about September 24, 1973, the defendants Ernest Coralluzzo, Marilyn Greco, Cathy Spangler, and Gerald Rubin, a/k/a Jerry, met at 113-115 Heights Drive, Yonkers, New York, to test, repackage and store approximately 12 kilograms of cocaine.

"7. During September, 1973, the defendant Anita Coralluzzo transported approximately 10 fifteen-ounce packages of cocaine to defendants Albert Rossi, Jr., and Ernest Coralluzzo, a/k/a Jake, at Yonkers, New York.

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"8. In or about November, 1973, the defendant Joseph DeLuca delivered approximately 2 kilograms of cocaine to the defendants Vincent Artuso and Steven Crea.

"9. In or about the month of October, 1973, the defendant Louis Guerra received approximately 1 kilogram of cocaine.

"10. In or about the month of October, 1973, the defendants Anthony De Pasquale and Philip Cimmino, a/k/a Philly Rags, negotiated for the purchaseof 1 kilogram of cocaine.

"11. In or about the month of October, 1973, the defendants Cathy Spangler and Maria Marrero removed approximately 11 pounds of cocaine from co-defendant Marilyn Greco's house at 113-115 Heights Drive, Yonkers, New York.

"12. On or about October 24, 1973, the defendant Thomas Vasta negotiated for the purchase of approximately 2 kilograms of cocaine with the defendant Albert Rossi, Jr., inthe Bronx, New York.

"13. During October or November, 1973, defendant Susana Sherman stored various quantities of cocaine in her apartment at New York, New York."

In addition, the government must show that at least one overt act was committed in the Southern District of New York. I charge you that the Southern District of

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New York includes the Bronx, New York.

If you find beyond a reasonable doubt that a conspiracy existed as charged in the indictment and that during the existence of the conspiracy at least one of the overt acts alleged was knowingly done by one or more of the conspirators in furtherance of some object of the conspiracy, proof of the conspiracy offense is then complete. It is complete as to each defendant found by the jury beyond a reasonable doubt tohave been knowingly and wilfully a member of the conspiracy at the time the overt act was committed, regardless of which of the conspirators committed the overt act.

While the indictment charges in count 1 that the conspiracy began on January 1, 1973, and continued to the date of the filing of the indictment, June 18, 1974, I repeat that it is not essential that the government prove that the conspiracy started and ended on or about those specific dates.

2 It is sufficient if you find that in fact a conspiracy was formed and existed for some substantial time within the period set forth in the indictment and that at least one overt act was committed in furtherance thereof in that period.

This part of the charge you do not have before

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you and I am now about to comment on the facts. Before I do, I want to emphasize to you again that you are the sole judge of the facts. It is your recollection and yours alone that is controlling. If your recollection of the evidence differs in any way from mine, your recollection governs. I am making these comments for whatever aid they may give to you.

The government contends that the evidence has established a single on-going conspiracy among all the defendants to purchase, procure and in some cases to steal and resell narcotic drugs, and that this conspiracy spanned the period of January 1, 1973, to June, 1974; but, as I recall the testimony, no acts in furtherance of the conspiracy as testified to here postdated January, 1974.

The government contends that Ernest Coralluzzo, Albert Rossi, Joseph DeLuca, James Angley, James Capotorto, Charles Guida, Joseph Lepore, Louie Lepore and Gary Pearson were the principal actors; that Rossi and Coralluzzo used Cathy Spangler,Marilyn Greco, Maria Marrero and Anita Coralluzzo, to package, store and transport the narcotics; that Rossi and Coralluzzo sold the drugs to James Capotorto, Joseph Camperlingo, Raymond Thompson, Angelo Bertolotti, Webster Eugene Bivens, Vincent Artuso, Steven Crea, Philip Cimmino, James Serrano, Nathaniel Arnold and Louie Guerra.

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The government contends that the proof established the following as to each defendant:

That Joseph DeLuca accompanied Rossi and Coralluzzo and the others on the trip to Florida in September of 1973 and helped steal 12 kilograms of cocaine from Franklin Flynn; that DeLuca helped transport the cocaine from Kennedy Airport to 2007 Narragansett Avenue, where it was transferred to Rossi and Coralluzzo: that DeLuca received two to three thousand dollars in cash for his services and the remainder of his $5000 fee in cocaine; that in late September or early October of 1973, Rossi gave DeLuca two 15-ounce packages of cocaine,with instructions to deliver the cocaine to Louie Lepore: and that Coralluzzo informed Rossi that DeLuca on another occasion had delivered two kilograms of cocaine to Vincent Artuso outside the Four Winds Bar.

That James Angley travelled to Florida on September 22, 1973, to participate in the hold-up of Franklin Flynn and that although he returned to New York before the hold-up occurred, he received payment for his efforts from Coralluzzo and Rossi in the form of three to four ounces of cocaine; that while Coralluzzo and Rossi were fugitives Angley acted as their agent in arranging for the distribution of cocaine and the transfer of money

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from various drug sales; that on December 10, 1973, Angley delivered a 1-ounce sample of cocaine to John Serrano for sale to a confidential government informant at the Chaparral Lounge; that on December 12, 1973, Angley supervised the attempted delivery of 1 kilogram of cocaine to Serrano and the informant at the Cross-Town Diner in the Bronx.

That James Capotorto purchased 1 kilogram of cocaine from Rossi in May or June, 1973, and that at the same time Capotorto and Thompson received another kilogram of cut or diluted cocaine and that Capotorto returned to Florida with the two kilograms of cocaine; that Capotorto discussed with Rossi and Coralluzzo later in Florida the kilogram of cut cocaine which Capotorto and the others involved werehaving difficulty selling. The government also points to the marijuana transaction as evidence of Capotorto's dealing with Rossi in illicit substances.

That Raymond Thompson, alongwith Capotorto, took delivery of two kilograms of cocaine at 2007 Narragansett Avenue in the Bronx and that Thompson handed Rossi and Coralluzzo the seventeen to nineteen thousand dollars which Capotorto and Thompson stated was the money they and Camperlingo and Bertolotti had pulled in order to buy the kilogram of cocaine; that later Thompson paid Rossi $5000 in Florida as a partial payment on the kilogram of cut

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cocaine that Rossi and Coralluzzo had given to Thompson and Capotorto; that the testimony of Agent Festa with Thompson in Florida in May of 1974 is proof of Thompson's knowledge of the existence of the conspiracy and of his prior dealings with Rossi and that it shows Thompson's knowledge and intent.

That Angelo Bertolotti and Joseph Camperlingo, along with Capotorto and Thompson, had pooled their money in order to buy cocaine from Rossi and Coralluzzo in May or June, 1973, and that at a meeting in Florida in June of 1973, Camperlingo and Bertolotti told Coralluzzo and Rossi that the cocaine they had received was not good for injecting.

That Joseph Camperlingo and Angelo Bertolotti were partners as indicated, and that in addition Camperlingo's taped conversation with Special Agent George Festa in May of 1974 is proof of Camperlingo's knowledge of the existence of the conspiracy and is proof of Camperlingo's knowledge and intent as to the aims and purposes of the conspiracy.

That Rossi asked Webster Eugene Bivens in July or August of 1973 to take one-fourth kilogram of cocaine for $5000 and that Charles Guida thereafter delivered the cocaine to Bivens; that some time after the Florida trip

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Bivens advised Guida that the cocaine he had given was weak and that he needed more cocaine to strengthen it; and that Rossi gave another one-fourth kilogram of cocaine to Guida who delivered it to Bivens.

That Steven Crea and Vincent Artuso in September or October of 1973 met Rossi and Coralluzzo in front of a social club in the Bronx; that Rossi and Coralluzzo informed Vincent Artuso that they had a shipment of pure cocaine; that Artuso stated that he had means of getting rid of this cocaine; that Crea stated that anything Artuso took he would guarantee; that Crea and Artuso told Rossi and Coralluzzo that they would deliver $50,000 as front money for the entire shipment of cocaine; that on the following day Crea told Rossi and Coralluzzo that he could come up with $20,000, but not $50,000, and that on the next day Crea told Rossi and Coralluzzo that he could not come up with the $20,000; that in December of 1973 Rossi was informed by Coralluzzo that he had given two kilograms of cocaine to Joseph DeLuca to be delivered to Vincent Artuso and that Artuso was going to pay $15,000 per kilogram.

The government contends that a few days later Coralluzzo and Rossi went to the Four Winds Bar to get paid for the cocaine; that Rossi, Coralluzzo and Artuso went into the kitchen of the Four Winds Bar where Artuso gave

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them $9000, explaining that he had taken a thousand dollars off the top because Ernest Coralluzzo owed Crea $1000; and that Rossi took $5000 and Coralluzzo took $4000.

That Joseph Lepore together with his brother Louis Lepore met with Coralluzzo and Rossi at Raffaela's Restaurant to discuss the sale of cocaine to third parties; that Joseph Lepore and his brother Louis told Rossi and Coralluzzo that they wanted to make some money on the cocaine sales for their part as middlemen, that through Joseph Lepore and Louie Lepore a sale of 1 kilogram of cocaine was made to Philip Cimmino.

The government also contends that some time between late October and mid-November, 1973, Joseph Lepore met Albert Rossi at Louis Lepore's house and told Rossi that he could sell a kilogram of cocaine; that Coralluzzo delivered the cocaine to Joseph and Louis Lepore but that they were unable to sell it.

That Thomas Vasta on October 23rd told an undercover agent that he could get him 5 kilograms of cocaine, and that on the following day at a birthday party for Albert Rossi he asked Rossi for 2 or 3 kilograms of cocaine but was turned down; that Vasta again met with the undercover agent on October 26th and December 27th and told him he could get 5 kilograms of cocaine from his man Ernie

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in the Bronx but that problems would have to be cleared up first.

The government contends that during this period of time Vasta telephonedErnest Coralluzzo several times and later met with him at the Our Room Bar on Long Island.

That Susana Sherman stored cocaine in her apartment from time to time for Coralluzzo and Rossi; that during November, 1973, Maria Marrero drove from New York to Boston with two men to sell a kilogram of cocaine, that they sold part of the cocaine, and that the two men returned to New York with the unsold portion.

The government contends that Rossi placed this cocaine in a closet in the master bedroom of Susana Sherman's apartment and that Rossi told Susana Sherman that he was doing so.

That Marilyn Greco, during the period from September, 1973, until June, 1974, provided material assistance to Rossi by meeting them at the airport on their return from Florida, by helping to weigh, package and seal the cocaine that was brought to her house, by secreting large amounts of cocaine in the attic of her home, and by picking up and delivering packages of cocaine when requested to do so by Rossi.

That Philip Cimmino negotiated to buy all of the

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cocaine that Coralluzzo and Rossi had available; that Cimmino met with Coralluzzo, Rossi and others at Rafaela's Restaurant and agreed to buy 1 kilogram of cocaine for $23,000; that Rossi had the kilogram of cocaine delivered to Cimmino and that Cimmino acknowledged receiving it; that Cimmino met with Coralluzzo and Rossi on two further occasions and that he stated that he would take all of the cocaine and any heroin that Coralluzzo and Rossi might have, and that he wanted to eliminate the middlemen.

That Nathaniel Arnold, sometime after November 18, 1973, met with Rossi and Guida and agreed on a price for a package of cocaine; that Coralluzzo gave Guida a one-eighth kilogram package of cocaine, which Guida then delivered to Arnold; that Arnold again met with Rossi and Guida and that this meeting resulted in Guida delivering another one-eighth kilogram of cocaine to Arnold; that Arnold spoke with Guida about buying one or two kilograms of cocaine and that in December Guida, with Rossi's permission, picked up a package of cocaine at Marilyn Greco's house and delivered the package to Arnold, who paid $17,000 for it; that Arnold later told Rossi that he was interested in buying more cocaine and that he could sell Rossi an ounce of heroin for $1200.

The government contends that Rossi bought the

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ounce of heroin from Arnold.

That Cathy Spangler rendered material assistance to Rossi and Coralluzzo during the period from September, 1973, until June, 1974, when the conspiracy terminated; that she met Coralluzzo and Rossi at the airport; that she and Marilyn Greco went to buy a sealing machine to package the cocaine, and that she assisted Rossi and Coralluzzo in packaging the cocaine; that on another occasion she helped Rossi make up a one-fourth package of cocaine at Marilyn Greco's house; that on October 25, 1973, Cathy Spangler went to Marilyn Greco's house, picked up the remaining packages of cocaine, and brought the cocaine to Coralluzzo, Rossi and Angley, who were waiting in another car; that when she delivered the cocaine she said, "Here are the goods."

That Anita Coralluzzo provided material assistance to Rossi and Coralluzzo from late September, 1973, until the conspiracy ended; that at some time after Ernest Coralluzzo and Albert Rossi had returned from Florida they took 10 packages of cocaine from Marilyn Greco's house, placed the cocaine in an attache case and delivered it to Anita Coralluzzo, who was waiting in an automobile at a location in Yonkers; that Anita Coralluzzo drove to her mother's house and placed the cocaine in the basement;

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that Anita Coralluzzo delivered $7000 to Ernest Coralluzzo and Albert Rossi while they were staying in New Jersey during the period October 25 to November 18, 1973, and that Anita Coralluzzo had received this money from James Angley, who had obtained it from narcotic drug transactions he made on behalf of Ernest Coralluzzo and Albert Rossi.

That Louis Guerra from January 1, 1973, to December, 1973, sold and bought cocaine; that in February or March, 1973, Guerra met James Lombardo at the airport in New York with 2 kilograms of cocaine for delivery to Rossi in Florida; that Rossi and Coralluzzo returned this cocaine to Guerra; that Guerra delivered another 2 kilograms of cocaine to Rossi at 2007 Narragansett Avenue; that Rossi sold these 2 kilograms to Capotorto and Thompson and that out of the proceeds Guerra was paid $12,000 or $13,000 by Rossi and Coralluzzo.

In September or October of 1973, Guerra purchased a kilogram of cocaine from Rossi and Coralluzzo for $10,000; that Guerra sold an ounce of cocaine to Gary Pearson for $1000 in July of 1973; and that Pearson in turn sold Guerra one-eighth kilogram of heroin on two occasions, once in July and again in early October of 1973. On these occasions Guerra paid $3500 and $5000 to Pearson for the heroin.

The government also contends that in August,

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1973, at Guerra's request, Pearson obtained a kilogram of cocaine from Jerry Rubin to sell to one of Guerra's customers at the Ninth Circle Bar.

The evidence which the government contends constitutes proof of the substantive counts -- count 2 as to DeLuca; count 3 as to Steven Crea; count 4 as to Louie Guerra; count 5 as to Philip Cimmino and Joseph Lepore; and count 9 as to Arnold -- has already been discussed in respect of the contentions of the government as to each of these defendants which I have outlined to you. The government contends as to the respective counts that Joseph DeLuca, Steven Crea and Joseph Lepore aided and abetted the commission of these crimes, which I have explained in discussion of the legal requirements for conviction of the substantive counts.

The defendants all contend that the principal, if not sole, testimony implicating them is that of Albert Rossi. They contend that Rossi cannot be relied upon; that the testimony is laced with material inconsistencies and many lapses of memory, especially under cross-examination; that he is an unstable person, a pathological liar; that he is prone to violence and criminality, thathis past criminal record and wholesale deviant behavior underscore the fact that his testimony is not worthy of belief;

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indeed, the defendants contend that Rossi's testimony is a figment of his imagination, that he hopes that by implicating them that he will escape punishment for his own crimes; that he received money as an informer and anticipates receiving additional funds; that, in addition, he has a special motivation to lie in respect of Anita Coralluzzo, James Angley and James Capotorto -- the former two because he is jealous of their close relationship to Coralluzzo, and the latter because Capotorto gave him a thrashingbecause of Rossi's sexual abuse of Capotorto's girl friend; that as to some of the other defendants that he seeks revenge because they refused to put up bail money for him or because they may have displeased him in some other way.

DeLuca contends that he went to Florida but he did not attend any pre-briefing in New York on the reason for the trip, nor was he present at the various meetings in Florida with Flynn and others when Rossi and Coralluzzo revealed the reason for the trip. DeLuca contends that he was not present at the actual stick-up. He denies that he went by taxi to Rossi's mother's house, and denies making any subsequent deliveries of cocaine for Rossi or anyone else.

James Angley contends that he has been working in the trucking business since he was 16 years of age;

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that he and Coralluzzo were partners in the trucking business in 1973; that he was invited to Florida on September 22, 1973, by Ernest Coralluzzo; that he did not know anyone other than Ernest Coralluzzo and Albert Rossi before that trip; that he did not know the intended purpose of the trip other than believing it was for a few days' rest; that upon learning in Florida of the intended purpose, he refused to participate and arranged at his own cost and expense to return home before the alleged crime was committed and had no part in said crime and did not benefit from it in any way.

Angley contends that Rossi's statement that he believed that Angley received 3 to 4 ounces of cocaine is totally untrue, and he denies acting as Mr. Rossi's eyes and ears. He admits to having visited with Rossi and Coralluzzo when they were fugitives and admits having told Coralluzzo that he would contact his lawyer if he wanted him to but never offered to sell or handle drugs for either of them and denies staying overnight at a motel.

Angley denies any narcotics transaction, direct or indirect, with Charles Guida and Serrano; he does not know Mr. Guida and never had a drug dealing with him or anyone else.

He denies that he gave Anita Coralluzzo $7000 for

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Rossi and Coralluzzo. He admits having driven Coralluzzo and Rossi some time in October to meet Miss Spangler and Miss Marrero, but nothing was done nor was any narcotics seen, discussed or in any way referred to.

He contends that the testimony of Special Agents Muniz and Bell about observing him has been proved false in that both said they identified Mr.Angley and he points out that Special Agent Bell admits that he was among the group that almost arrested Angley's son in the mistaken belief that the 23-year-old young man was Angley himself.

James Capotorto and Raymond Thompson contend that from May 25 to June 4 Capotorto was hospitalized with hepatitis; that on his release from the hospital it was necessary for him to stay close to his home and take prescribed medication for the next two to three weeks and that he and Thompson could not have been in New York buying any cocaine from Rossi, as he testified; that Rossi's testimony about meeting Capotorto and Thompson later in Florida for payment for this transaction is similarly proved false by Capotorto's illness and confinement to Florida during the period in question.

Joseph Camperlingo and Angelo Bertolotti contend that they are businessmen; that they have had no dealings with cocaine and that Rossi's testimony linking them to

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drug transactions through Capotorto and Thompson has been proved to be false and that even if you believe the testimony about marijuana, you cannot find them guilty under the indictment because they are not charged with that.

Webster Eugene Bivens contends that the evidence against him is too weak to meet the government's burden. Only Rossi mentions him, and his testimony is that Rossi met Bivens in Charles Guida's apartment in July or August; that he and Guida asked Bivens to sell one-fourth kilo of cocaine.

Rossi did not say what Bivens responded, but he did say that Guida had told him, Rossi, that he had given Bivens cocaine on two occasions and marijuana on another occasion; that he never received any payment for the cocaine or marijuana; that he had only seen Bivens once and then for roughly 15 minutes and that he could not recall whether Bivens wore glasses, had a beard or mustache or had different length sideburns. Bivens contends that Rossi's testimony is false and is the rankest hearsay and should not be credited.

Steven Crea contends that he is a legitimate businessman; the only testimony implicating him is Rossi's direct testimony, that is, examination by the government;

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that when he was recalled on cross-examination about the guarantee Crea allegedly gave to back up Artuso, Rossi stated he could not remember; Rossi categorically stated that he had never purchased or received drugs from Crea; and Crea contends that no link between him and narcotics has been established.

Joseph Lepore contends that he has worked hard all his life; that he now works for the City; that his brother is Louis Lepore; that obviously he cannot be held responsible for his brother and cannot be convicted because of what the evidence may show concerning his brother's relationship to or involvement with Rossi; that he may have seen Rossi at his brother's; that on one occasion he met his brother at a restaurant and that Rossi was present but narcotics was not discussed; that he never sold, bought or possessed narcotics in respect of transactions with Rossi or anyone else.

Thomas Vasta contends that he never had any narcotics dealings with Rossi or Coralluzzo; that he never had any drugs to sell or any source of drugs; that he does not remember talking to the undercover agent about any drugs; and that, in any event, the agent testified that none was ever sold by Vasta to him.

Susans Sherman contends that Rossi's testimony

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about storing cocaine in her apartment and telling her about it is all fabrication; that it's untruthfulness has been established through the government's witness; that you will recall that it was the government's witness, Maria Marrero, who testified that she, Susana Sherman, refused to sell drugs for Rossi and that on one occasion when she found drugs in her apartment brought there by Rossi, that she became violently angry, flushed the cocaine down the toilet and told Rossi that she wanted nothing to do with drugs and not to bring drugs into her apartment; that on this occasion Rossi threatened to kill Miss Sherman; that her anger and strong opposition to involvement in drugs make clear that she would not have acquiesced in Rossi's dealing in or storing drugs in her apartment.

Marilyn Greco contends that she did not know there was any cocaine being stored in her house; that she was not aware Rossi was dealing in cocaine and that she never knowingly helped Rossi in his cocaine transactions. Her only crime was becoming emotionally involved with Rossi. She contends that her lack of knowledge is corroborated by the testimony of Pearson and Marrero, that Gary Pearson testified that after returning from Florida he went over to Marilyn Greco's house, that when he arrived Rossi and Coralluzzo were in her bedroom, that he never saw Marilyn

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Greco go into the bedroom, that she, Marilyn Greco, made some sandwiches and coffee in the kitchen while Pearson was in the bedroom with Rossi and she served the sandwiches and coffee in the kitchen and left before there was any conversation with respect to drugs; that Pearson also testified that on one occasion he picked up cocaine from Rossi at Marilyn Greco's house, but that Marilyn Greco was not at home at the time.

Maria Marrero testified that she was never told by Rossi to go to Marilyn Greco's house to pick up cocaine; that she did not see Cathy Spangler carrying a small white valise as she came out of Marilyn Greco's house. Marilyn Greco denies she picked up any cocaine in Guida's car and denies that she was ever told by Rossi to remove the cocaine and place it in her attic.

Philip Cimmino contends that he has never been involved in any narcotics dealings of any kind with Rossi or anyone else, and that Rossi's testimony concerning him is totally false.

Nathaniel Arnold denies any dealings with Rossi and contends that Rossi's testimony is totally false.

Cathy Spangler contends that while she and Marilyn Greco may have met Rossi and Coralluzzo at the airport on the latter's return from Florida, that she

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didn't know of his involvement in drugs, never saw any cocaine, and that ifshe and Marilyn went to a store after they all arrived at Marilyn's house, it was to get food for Mrs. Greco and for her to prepare dinner for them; that she never bought any equipment to seal or package drugs; that she never helped package any cocaine; that she never took any cocaine from Greco's house to deliver to Rossi; that this has been corroborated by Maria Marrero's testimony. She admits to meeting Rossi, Angley and Coralluzzo and that Maria Marrero was with her at the time but contends that nothing untowards occurred. She admits to having a personal relationship with Coralluzzo, and spent time with him in Jersey, but she did not know he was a futigive.

Anita Coralluzzo contends that if she met her husband, as Rossi testified and her husband gave her an attache case to take to her mother's, that she was not advised and did not know it contained cocaine; that when the valise was supposedly opened in her mother's house that even Rossi's testimony does not indicate that she saw what was in the attache case, she did not know that her husband was involved, if he was, in cocaine with Rossi; that all she knew was that he was in the trucking business with Angley; that when she finally learned her husband was in trouble, she was not even then told all the facts; that she never

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took any money to him in Jersey.

Louis Guerra contends that all of Rossi's testimony about drug-dealing is false; that Rossi's forte was robbing and stealing; that the wiretapped conversations which you heard do not involve any drugs but involve a robbery of Lucas, Matthews and Peter Mengrone; that he never dealt with cocaine, heroin or marijuana with Rossi or anyone else; that all of Rossi's testimony is pure fabrication; that he never had any narcotics transactions with Gary Pearson; that he never delivered any cocaine to Lombardo and that the testimony concerning his bringing cocaine to Rossi for sale to Capotorto and Thompson has been proved false by evidence of Capotorto's illness and hospitalization.

Now we are back on the text.

I will now address myself to more general considerations which you must bear in mind during your deliberations. First I must emphasize again that there are 17 defendants on trial here and as to each count you must consider separately whether the specific defendants charged in that count have been proved guilty beyond a reasonable doubt.

It is your duty to give separate, personal consideration to the case of each defendant. When you do so,

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you should analyze what the evidence in the case shows with respect to that individual, leaving out of consideration entirely any evidence admitted solely with regard to other defendants. Each defendant is entitled to have his case determined from evidence as to his own acts and statements and conduct, and any other evidence in the case which may be applicable to him. The fact that you may find one or more of the accused guilty or not guilty on any particular count should not influence your verdict with respect to the other defendants or with respect to any other count.

The government called as witnesses Albert Rossi, Gary Pearson, John Serrano and Maria Marrero, who, if their testimony is to be accepted, were accomplices in the crimes charged against the defendants in this case.

In the prosecution of crime, the government is frequently called upon to use witnesses who are accomplices. Often it has no choice. The government must rely upon witnesses or transactions, such as they are.

The fact that some of these witnesses have been convicted of serious crimes, especially ones bearing on their veracity, may be considered by you as bearing on their credibility as witnesses in this case.

There is no requirement in the Federal courts that the testimony of an accomplice be corroborated. The

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government contends that the accomplices' testimony if corroborated by other evidence with respect to several key portions of their testimony. However, even without such corroboration, conviction may rest upon the testimony of an accomplice, if you believe it and find it credible.

Let me caution you that an accomplice's testimony implicating a defendant as a perpetrator of a crime is inherently suspect, for such a witness may have an important stake in the outcome of the trial. An accomplice so testifying may believe that the defendant's acquittal will vitiate expected rewards that may have been either explicitly or implicitly promised him in return for his plea of guilty and his testimony.

Therefore, an accomplice's testimony should be viewed wih caution and scrutinized with care.

You must consider whether such testimony was inspired by any motive of reward, of self-interest or hostility, bias or prejudice against the defendants so that he gave false testimony or colored his testimony in these proceedings. If you find that it was, you ought unhesitatingly to reject it.

It does not follow, however, that because a person has acknowledged participation in the crimes charged against the defendants that he is incapable of giving a

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true version of what he testified to in the case on trial. As to whether his version is true or false is for you to decide.

Defendants Angley, Lepore and Crea have introduced evidence of their good reputation in their communities for honesty, integrity and truthfulness. The introduction of such evidence bears upon the unlikelihood that a person with this character would perpetrate the crimes charged in this indictment and, therefore, you should consider this evidence in the case in determining whether the prosecution has proved defendants' guilt beyond a reasonable doubt.

Evidence of good reputation may, in itself, create a reasonable doubt as to guilt where without such evidence no reasonable doubt would exist.

On the other hand, if on all the evidence you are satisfied beyond a reasonable doubt that a defendant is guilty, a showing that he previously enjoyed a reputation of good character does not justify or excuse the offense and you should not acquit him merely because you believe that he is a person of good repute.

The testimony of a character witness is a reflection of a reputation in the community. Testimony of character reputation is not tobe taken by you as the

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witnesses' opinion as to the guilt or innocence of the defendant on the charge in this court. The guilt or innocence of the defendant is for you and for you alone to determine. Consequently, you may consider whether those with whom Angley, Crea and Lepore came in contact previously and with whom they established a community reputation were not informed or may have been misled in that these defendants did not reveal to them matters bearing on their character. This is a matter for you to determine from all the evidence.

Certain of the defendants have not taken the stand to testify.

As I told you before, the government has the burden of proving the charges against each defendant beyond a reasonable doubt. A defendant does not have to prove his innocence. A defendant has the right to remain silent. He does not have to testify or present any evidence in his behalf, and you may not draw any inference or conclusion or form any prejudice because a defendant did not testify or present evidence.

On the other hand, the law permits a defendant to testify in his own behalf if he wishes to do so. James Angley, Steven Crea and Joseph Lepore have elected to testify.

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The testimony of a defendant must be considered by you as would the testimony of any other witness. You must determine the credibility of a defendant who testifies and in doing so you must consider the deep personal interest which every defendant has in the outcome of his case. Indeed, it is fair to say that any defendant has the greatest stake in the outcome. A defendant's interest in the result of his trial is of a character possessed by no other witness. That interest requires that you receive such testimony with caution and subject it to the most careful examination.

However, it by no means follows that simply because a person has a vital interest in the end result he is not capable of telling a truthful, candid and straightforward story. It is for you to decide to what extent, if at all, his interest has affected or colored his testimony.

Now, under your oath as jurors, you cannot allow a consideration of the punishment which may be inflicted upon a defendant, if he is convicted, to influence your verdict in any way enter into your deliberation.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence of a defendant solely upon the basis of such evidence and the law.

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You are to decide the case upon the evidence, and the evidence alone, and you must not be influenced by any assumption, conjecture, or sympathy, or any inference not warranted by the facts.

If you fail to find beyond a reasonable doubt that the law has been violated, you should not hesitate for any reason to find a verdict of acquittal. But, on the other hand, if you should find that the law has been violated as charged, you should not hesitate because of sympathy or any other reason to render a verdict of guilty.

I would like to point out that you should not enter the juryroom with any preconceived pride of opinion. You should not be unwilling tobe convinced by intelligent argument with your fellow jurors. Each juror has to answer to his or her own conscience, and each has to decide this case for himself or herself, but in so doing you should be willing to consider the views of the other jurors and to talk things out and try your best to reach a unanimous agreement.

Your verdict must be one with which each juror agrees.

If during your deliberations you deem it necessary to have a copy of the indictment, or desire any of the exhibits, they will be sent in to you on request. If

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you wish any portion of the testimony read or the wiretaps replayed or the Court's charge reread, thatwill be done.

In conclusion, let me say: every criminal case is important. It is important to the government and it is important to the defendant. It is your obligation to decide the case on the evidence and on the law as I have charged it to you. I give the case to you with the assurance that you will do just that.

I now will have to go over my charge with counsel, and I think probably the most efficient way to do that is to excuse you while we are doing it. If you will go to the juryroom, then I will call you when we are through.

MR. GOLDBERGER: There shouldn't be any deliberations until we have reached a conclusion.

THE COURT: I agree. You are to go to the juryroom. I am only doing this for efficiency. Ordinarily I would leave you here, but I dont think you can all get into my robing room. If you go to the juryroom, you are not to discuss this case. You are not to discuss it yet.

(Jury leaves courtroom.)

THE COURT: I am going down the line. Mr. Weinstein, you can place your objections on the record.

MR. M. WEINSTEIN: Your Honor, at this time I have no specific additional requests to charge. With

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regard to objections, specifically with regard to Mr. DeLuca's contentions --

THE COURT: With what?

MR. M.WEINSTEIN: Contentions.

-- I had in my notes that I handed up to the Court certain references to testimony, specifically with regard to absences at meetings in Florida. I would ask the Court to make specific reference to the testimony that I referred to in my notes.

THE COURT: I said he was absent, that was his contention. I think I have handled that fairly.

MR. M. RICHMAN: If the Court pleases, I don't have any specific exceptions, except that I would join in all subsequent exceptions taken by my brother counsel just to protect the record.

I would further request your Honor to charge the jury with reference to contentions or at least the legal interest that the Special Agents have in the outcome of this case.

THE COURT: That is denied.

Mr. Weinstein.

MR. A. WEINSTEIN: Your Honor, I object to the Court's charge as to that paragraph where you make the statement:

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"In making this determination, you should presume that a person intends the natural and probable consequences of his acts."

That portion of the charge has been condemned -- I think the name of the case is Henderson v. United States -- as being a direct infringement on a person's presumption of innocence, and I submit that it is erroneous and infringes on the presumption of innocence.

THE COURT: All right.

MR. A. WEINSTEIN: I take exception to it.

I object to your marshalling of the evidence in relation to my client, specifically in the fact that your Honor left out phone calls made by the doctor to Mr. Capotorto during that three-week period of time, which I think is most vital and important if you are going to marshal the evidence as you did. I think it should have been in there.

I object to your Honor's accomplice instructions and your failure to give informer instructions as submitted.

I renew my objections to all of those instructions I submitted which your Honor did not give and again request that they be given.

THE COURT: All right, denied.

Mr. Kossman.

MR. W.WEINSTEIN: I have some more, please.

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I would like to see the verdict forms which we have not been supplied before they are given to the jury.

THE COURT: The verdict form merely lists the individuals with counts and guilty or not guilty.

MR. A.WEINSTEIN: Is it one verdict form per defendant or one big one? I don't know the procedure. That is why I ask.

THE COURT: It has the name of the defendant, Joseph DeLuca, count 1, count 2, not guilty, guilty. It goes down the line as to each person so they can record their verdict.

MR. A. WEINSTEIN: For the record, I renew my objection to the jury being allowed to take those into the juryroom.

THE COURT: You really don't have to waste time. That objection is clearly on the record.

All right, Mr. Kossman.

MR. KOSSMAN: I just have two. I handed up -- I don't know if your Honor received it -- 31, my theory of the case, the evidence. Did your Honor receive it?

THE COURT: Yes, I have it.

MR. KOSSMAN: And where I ask your Honor to charge what I have there. Mr. Capotorto said to Rossi that money was owedon the marijuana and that we didn't do the right

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thing, we beat him, and that he laid out a lot of money. (Page 338.)

And the next sentence: Mr. Camperlingo told Agent Festa that he, Rossi, was in on the deal with us, we brought in some grass and gave it to him, and he brought it up to New York and that was the end of it.

And the agent never contradicted him.

I think that is important because that is our theory of the case.

The other and last is this: the government finally agreed that if a man is only involved with marijuana he should be acquitted. Now, they prepared a supplemental request and it's done in a negative way: as a result, you may not find the defendant guilty.

I am asking this Court to state to the jury that: if you find that the defendants Camperlingo and Bertolotti's relationship concerned only marijuana, you must find him or them not guilty.

All right. Is there anything else?

MR. KOSSMAN: That's all.

THE COURT: I reject all that. I think I have made as fair a summation as I could in terms of your contentions. I indicated to the jury --

All right, Mr. Stokamer.

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MR. STOKAMER: I join in the exceptions made by all other counsel, specifically those of Mr. Alan Weinstein, and I also specifically object to your Honor's failure to include -- the Court's failure to include in the marshalling of the evidence that the government never contended that Rossi was present or that he observed any pass of narcotics to Mr. Bivens, that the government contended that there was never any payment for it and further --

THE COURT: I said that. Don't tell me I didn't say that.

MR. STOKAMER: I might have missed it, your Honor.

THE COURT: I said that.

MR.STOKAMER: It is my understanding your Honor said that the government contends as to Webster Bivens --

THE COURT: I am talking about your contentions, not the government's.

MR. STOKAMER: I don't believe your Honor specifically mentioned it. I might be mistaken.

THE COURT: He never received any payment. I certainly said that.

MR. STOKAMER: If I missed it, I apologize. I guess the record will speak for itself.

THE COURT: You don't have to apologize.

MR. STOKAMER: I would also ask your Honor give

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a more cautionary instruction to the jury regarding the weight of hearsay testimony.

MR. VICTOR: With regard to reasonable doubt, your Honor did state to the jury that reasonable doubt is not an imagined one or a speculative doubt, but at no time did you instruct the jury they may not convict on mere speculation. I request your Honor to do so.

THE COURT: I think my charge on reasonable doubt is full and clear. It will not be changed.

MR. VICTOR: With regard to the marshalling of the evidence, your Honor, your Honor did mention the defendant's contention that on cross-examination the witness Rossi at one point stated that he did not remember, but the witness Rossi also specifically stated with regard to that conversation in dealing with the guarantee that only three people were present. He stated that on page 1517 on cross-examination. I asked him:

"With whom did you discuss that transaction?"

And he stated, "Mr. Artuso, myself and Coralluzzo.

That is a direct contradiction of what he said on direct testimony, and I would request your Honor to instruct the jury in that regard.

THE COURT: I think I have made a fair marshalling

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of the evidence for all defendants. That includes your client.

MR. VICTOR: One other item.

I would respectfully request in marshalling the evidence you also marshal that portion of the testimony given by Mr. Crea with regard to his background and character and so forth. You just covered it generally, not specifically.

THE COURT: All right.

MR. VICTOR: I would move also to adopt all of the other arguments of counsel.

THE COURT: Mr. Richman.

MR. W. RICHMAN: May I state for the record, if it please the Honorable Court, on behalf of the defendant Joseph Lepore, that I am generally satisfied with the charge and find no objections to that, but I do --

THE COURT: That's a surprise.

MR. W. RICHMAN: But I do except --

THE COURT: I am glad someone is satisfied.

MR. W. RICHMAN: I am, your Honor, but I do feel in the interests of justice your Honor has in effect quoted verbatim the government's contentions as submitted in Request No. 28.

THE COURT: That is not true.

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MR. W. RICHMAN: Or the basic part of it and that your Honor has substantially failed to quote the language that I used in the request on behalf of the defendant Lepore.

THE COURT: All right.

MR. W.RICHMAN: I think perhaps that ought to be recorded.

THE COURT: Mr. Frankel.

MR. FRANKEL: I don't agree with my associate who has just spoken.

MR. W.RICHMAN: I haven't agreed with him for 40 years, your Honor.

MR. FRANKEL: Being a little older than he is, I don't have to agree with him.

What he said about the Court's charge I specifically disagree with, particularly as to marshalling the evidence, and I join all other counsel in all of their objections.

I do want to point out, however, that your Honor interpolated at one point where, in addition, the government must show at least one overt act was committed in the Southern District of New York, and at that point you added "and elsewhere." Those were the words you interpolated.

Then you went on to charge that the Southern

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District includes the Bronx and New York.

But that is not my basic objection. Your Honor, if I may politely say to your Honor, has misread the overt act No. 12 as to Thomas Vasta. At the beginning of the trial I called the Court's attention to the fact that the overt act reads on or about October 24, 1974, and your Honor read to the jury 1973.

I also made a motion at the beginning to throw out this entire indictment, if I may use that expression, on the ground that it is invalid because Mr. Rossi testified one morning as to one particular person who is involved, and Indictment No. 5 of 1975 came down with all of the names.

THE COURT: All right.

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MR. PANZER: Your Honor, I am going to quit while I am ahead.

THE COURT: Pardon?

MR. PANZER: I have no objection.

THE COURT: All right.

MR. LEVENSON: Your Honor, I join all of other counsel in all other motions and applications which apply to my client.

I specifically object to the Court highlighting the defendant's special interest in the outcome of the case. I think that is frowned upon by this circuit. I think the Court should have merely said that a defendant has an interest in the case and the jury is to consider what that interest is, without specially highlighting their interest.

MR. GOLDBERGER: I have threeor four, your Honor.

First of all, this Court charged at least seven or eight times during its charge in terms of guilt or innocence. That is not a proper term under the law in this circuit as I understand it. It's guilt or non-guilt and it's beyond a reasonable doubt. The only time innocence is mentioned is when you talk about the presumption of innocence.

Your Honor, I also object to the Court's failure to mention Mrs. Albert Rossi at least one time during its

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marshalling of the evidence for the defense, in addition to which at the end of the charge --

THE COURT: Failure to do what?

MR. GOLDBERGER: Failure to mention Mrs. Albert Rossi's testimony at least once. I don't recall that you did.

THE COURT: No, I did not.

MR. GOLDBERGER: In addition, your Honor talked about at the end of the charge in regard to the jurors and their own views. I believe the Court should have instructed this jury that they under any circumstances do not have to give up their own conscientious views even if they are in the minority.

The last thing, your Honor, I just want to join in Mr. Levenson's requests regarding an objection regarding the defendant's own interest in a case. I believe I have never heard a charge in this district this strong on the defendant's own interest when he testifies.

THE COURT: All right.

MR. EPSTEIN: Your Honor, on behalf of the defendant Nathaniel Arnold, he takes the following exceptions:

He takes exception to the Court's charge on the testimony of an accomplice. Your Honor in the charge laid great stress upon the fact that a witness might have an

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interest in the outcome, but your Honor, however, failed to charge, as requested, that a witness who is an accomplice might also try to cast blame or cast guilt upon others in order to lessen such guilt upon himself.

THE COURT: I don't agree with that.

MR. EPSTEIN: The circuit has already held in several cases that is proper.

THE COURT: I don't agree with that. I think I made it quite clear.

MR. EPSTEIN: Your Honor, defendant Arnold also takes exception to the Court's charge concerning one can be held responsible for the natural and probable consequences of his conduct. This is a case requiring specific intent in order to convict. One must find that one engaged in these activities illegally, unlawfully and knowingly.

Therefore, when such a finding is required to be made before one can stand convicted, you cannot charge that one can merely be found guilty based upon the inferences flowing from the consequences of their own conduct.

Thirdly, your Honor charged concerning the agreement in the case, that an agreement between any two individual defendants on trial or co-conspirators would be sufficient to establish the existence of a conspiracy. The circuit has been quite distinct over the years that

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there must be found to have been an agreement as to all individuals who are alleged to be members of the conspiracy. People cannot join a conspiracy by mistake or by accident and it must be made clear to the jury that an individual defendant, man or woman, can only be held liable insofar as the extent of their own initial agreement is concerned, that the agreement cannot exist between two defendants but must be found to exist as to all defendants whom they believe to be members of the conspiracy.

I would also take exception to the Court's charge on multiple conspiracies wherein the Court charged all or nothing. I am merely restating the reasons which I previously advanced to the Court at the close of the government's case.

I take exception to the Court's failure to charge on the knowing spectator theory under United States vs. Garguilo.

Your Honor, that sets forth the exceptions by the defendant Arnold.

THE COURT: All right. Mr. Baraban.

MR. BARABAN: To save time, your Honor, I am going to specifically join in the applications of Mr. Goldberger and Mr. Epstein.

THE COURT: Mr. Katz.

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MR. KATZ: Your Honor, defendant Anita Coralluzzo would request that you give a more fullsome charge to the jury with respect to circumstantial evidence, particularly that you instruct the jury that they may not pile inference upon inference. I don't think that was developed, at least to defendant's satisfaction, by the Court, that they may infer only from an established fact and not from another inference. I believe that is important in this case. That is the only request.

With respect to exceptions, I would specifically except to the Court's using the term "defendant's contentions" with respect to marshalling of evidence where the defendant in a criminal case doesn't have to contend anything. I did not submit any contentions for precisely that reason.

It is not the defendant Anita Coralluzzo's contention that the attache case did not contain cocaine, or whatever Rossi said it contained, but the event never happened.

THE COURT: Mr. Katz, I didn't say she contended it or didn't. She contended she had no knowledge of what was in it.

MR. KATZ: I would also except, your Honor, as did Mr. Epstein, with respect to the multiple conspiracy aspect of the charge. That I believe is violative of the

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Kelly case in that it calls for an all or nothing determination on the part of the jury.

I would further except to that portion of the Court's charge insofar as the Court instructed the jury that in their determining whether a defendant was a member of the conspiracy they could use hearsay evidence and declarations not made in defendant's presence.

THE COURT: All right.

MR. LEFCOURT: Your Honor, I would join in the general requests or objections, exceptions made by Mr. Goldberger, Mr.Weinstein, Mr. Epstein and Mr. Katz, and I have a note here, your Honor, from somebody who started way back in the beginning, they want to know whether all of the general exceptions by counsel as to the law would apply to them. I think if the Court indicates it would we can save some time.

THE COURT: All right.

MR. LEFCOURT: Your Honor, I would specifically add that I would ask the Court to clarify. During the courseof its conspiracy charge, after reading the indictment, where the purpose is to distribute or possess drugs, the Court then only talks about a conspiracy to violate the law. We have argued here extensively in front of the jury that there were many laws violated. Indeed, there are a lot of

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State statutes violated, robberies, et cetera. I think that has now been confused because the Court gave essentially a correct charge on the conspiracy but didn't specifically talk about the drug law.

THE COURT: All right. There is no basis in fact for that statement at all.

MR. LEFCOURT: Your Honor, during the Court's charge, and I am sure it was done by inadvertence, it turns out that the charge on credibility that we all have was out of order. It goes over on to a different page and the Court was reading from another page. There is one page out of order.

So the crucial charge to all of the defendants here, namely, credibility, was totally confused, because it doesn't follow, the pagination got confused. I saw several jurors turning the page trying to find out where the Court was. I indeed couldn't find out until I turned another page and found one page was skipped over.

THE COURT: You should have brought that to my attention. I wasn't aware of that.

MR. LEFCOURT: Your Honor, you were in the middle of your charge. I didn't want to stand up and make any noise during the charge.

I think that all counsel will agree -- all you

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have to do is take a look at it -- that that is the way it was.

Furthermore, your Honor, I appreciate the Court's attempt to try to instruct the jury with respect to my contentions concerning the wiretaps. However, I did not request the Court to say that it is our contention that the wiretaps "have nothing to do with narcotics at all." Indeed, it was my argument that the extent they have to do with narcotics was by fraud, and to the extent that the Court gave the charge to disregard it asan act in furtherance of the conspiracy I am prejudiced, because I never contended that it had nothing to do with narcotics at all, but that narcotics was the pretense.

So although the Court tried to give a charge, it has now put me in a position where I am worse off than when I started.

THE COURT: All right.

MR. LEFCOURT: Furthermore, your Honor, I would object to the marshalling of the evidence. I never in any part of my summation nor at any other time contended all of Rossi's testimony was a pure fabrication. I said that there were dashes of truth and cups of lies.

That may not be material to your Honor, but it sounded so foolish, that I would get up and say that every-

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thing that the man said is pure fabrication. It just puts my contentions in a very poor light.

MR. LAVIN: Your Honor, I just have two things. One, the limiting instruction as to Mr. Camperlingo and Mr. Thompson, I dont believe you gave it.

THE COURT: I did give it.

MR. LAVIN: Second, I would acquiesce in the deletion of that part of the charge under knowledge and wilfulness that says in making this determination you should presume that a person intends the natural and probable consequences of his acts. Mr. Reilly was upstairs trying to check that. I think there was a problem with that language.

THE COURT: What was the problem? Have you found it?

MR. LAVIN: We couldn't find the case.

THE COURT: It's too late now. I am not going to do anything about that.

All right. Bring the jury in.

(Jury present.)

(A marshal was duly sworn.)

THE COURT: Miss Greenstein, MissCasagga, Mr. Veth,Miss Hazell, Miss Klinke, you are now excused. I want you to do several things for me, however. I want

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you to report back here tomorrow morning. If necessary, I will give you further instructions as to that.

I want you not to talk to each other or to anyone about this case. I don't want you to talk to any of the lawyers, anyone, about this case, until such time as I may tell you otherwise.

Tomorrow morning you will report here at 10 o'clock. You may be excused now. Leave your notes. If there is any occasion for you to have them we will give them to you later on. Leave your notes with us.

Just let me thank you for being on the jury for this length of time.

All right. You may be excused.

(Alternate Jurors excused.)

THE COURT: I have for you, which my clerk will give to Miss De Simone, a sheet on which you may record your verdict. It lists each of the defendants and the counts in which that person is involved. You may have it during the course of your deliberations. The deputy clerk will give it to you as you go out.

(At 3.20 p.m., the jury retired to deliberate upon a verdict.)

THE COURT: All right, Mr. Reilly.

MR. REILLY: Your Honor, pursuant to the request

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ID

...RT OF INVESTIGATION

FILE TITLE	IDENTIFIER	FILE NUMBER
Ernest CORALUZZO, et al.	DA4-C1	C1-74-0151

PROGRAM CODE

[X] ACTIVE [ ] CLOSED [ ] REQUESTED ACTION COMPLETED
[ ] ACTION REQUESTED FROM

OTHER OFFICERS

CROSS FILE	RELATED FILES
[X]	CT-73-0108
[X]	G1-73-X100
[X]	GF: Joseph AIELLO
[X]	C1-73-0047
[X]	C1-73-0538

BY James Harris
AT Special Agent
New York, New York
DATE June 21, 1974

REPORT RE: Outline of Conspiracy #2, the Louis GUERRA, et al.

DETAILS:

1. Reference is made to S/A Harris' DEA-6s dated May 27, 1974 and May 31, 1974, S/A Robert Harris' DEA-6 dated 8/9/73, G1-73-X100 and S/A Early's DEA-6 dated 3/16/73, GF: Joseph AIELLO, regarding two different cocaine deliveries where Louis GUERRA has been identified as the source of supply; the subjects identified in these reports constitute Conspiracy #2. Reference is also made to DEA-6s dated 3/19/74, 4/9/74 by S/A Bell and 5/27/74 by S/A Harris, which identify Frank FLYNN as the source for 12 kilograms of cocaine; the subjects identified with the sale, possession and distribution of this cocaine constitute Conspiracy #1, Frank FLYNN, et al. Conspiracy #1 is further identified by superceding Indictment #620, SDNY; thirty defendants indicted on 6/18/74. The S74 CR 620 Indictment superceded the indictment brought as a result of C1-73-0538.

2. The GUERRA Conspiracy, #2, consists of three separate cocaine transactions spanning approximately a six month period in 1973. As previously reported GUERRA's source for cocaine was ultimately in Mexico. An unidentified subject in Los Angeles, California had the connection in Mexico and the cocaine was transported from California by Michael SLEVIN, GUERRA's brother-in-law. One shipment in May or June of 1973 of some 30 kilograms is alleged to have been transported by SLEVIN. The three transactions mentioned above are identified as follows:

a. During March 1973 James LOMBARDO a/k/a Jimmy LUMP traveled from Florida to a New York Airport and obtained two (2) kilograms of cocaine from Louis GUERRA on behalf of SC140038 and Joseph AIELLO. This cocaine was to be sold to Gregory SAMUELS and Jeff LNU. Kenneth O'DONNEL was also involved in the negotiations for the sale on behalf of SC140038. Ultimately the cocaine was not sold to Jeff LNU and SAMUELS. They were "ripped off" for approximately $36,000 by SC140038, AIELLO and other associates. SC140038 returned the cocaine to GUERRA in New York.

REGION 1, 5, 14
DISTRICT
OTHER Miami DETF
Group 42

SIGNATURE (Agent) James Harris
(Typed Name and Title)
Frederick U. Ford, Group Supervisor
DATE 7/11/74

DEA Form (Aug. 1973) -6

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TITLE	IDENTIFIER	FILE NUMBER
Ernest CORALUZZO, et al.	DA4-C1	C1-74-0151
	PROGRAM CODE	

DETAILS CONT'D.:

b. During June 1973 SC140060 purchased an ounce of cocaine from Louis GUERRA in New York City.

c. During June 1973 SC140038 and Ernest CORALUZZO obtained two (2) kilograms of cocaine from GUERRA and sold them to James CAPOTORTO, Ray THOMPSON, Joseph CAMPERLINGO, Angelo BERTOLOTTI and Salvatore RIPULONE. Payment for the cocaine was made partly in cash, marihuana and cocaine obtained from the Frank FLYNN in Conspiracy #1.

3. A number of the defendants in Conspiracy #1 appear in Conspiracy #2. AUSA Lavin, SDNY, may decide to merge these two conspiracies by using the evidence in Conspiracy #2 to support the more extensive Conspiracy #1.

PHYSICAL DESCRIPTIONS:

Above subjects previously described and identified in C1-74-0151.

DEA Form 6a (Aug. 1973)

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----------x

:

UNITED STATES OF AMERICA :

-against- :

ERNEST CORALUZZO :

:

----------x

United States Courthouse
Foley Square
New York, N. Y. 10007

May 10, 1974
2:35 p.m.

APPEARANCES:

JAMES LAVIN, ESQ.

Assistant United States Attorney

William Blitz, CSR
Acting Grand Jury Reporter

BLITZ-LORDER REPORTING CO.
CERTIFIED SHORTHAND REPORTERS
35 PARK ROW, N.Y. 10038
PHONE 349-5711

SC 114-1AC

THE FOREMAN: There is a quorum present.

A L B E R T R O S S I, J R., called as a witness by the Grand Jury, being first duly sworn by the Foreman, testified as follows:

EXAMINATION BY MR. LAVIN:

Q Would you give us your name and spell your last name for the reporter?

A Albert Rossi, R-o-s-s-i.

Q Where are you living currently or where is your home address?

A 1960 Williamsbridge Road in the Bronx.

Q You are currently incarcerated, are you not?

A Yes, I am.

Q That's on a state charge of a sale of narcotics?

A Yes, it is.

Q You also have been indicted on a federal charge on the sale of narcotics?

A Yes, I have.

Q I direct your attention to on or about September 22, 1973.

Did you and six other individuals leave

Narragansett Avenue in the Bronx--

A Narragansett Avenue in the Bronx.

Q From there did you go to LaGuardia Airport?

A Yes, we did.

Q Can you tell us the people that were with you?

A Myself, Albert Rossi, Ernest Coraluzzo, Robert Browning, Gary Pearson, Louis LePore, James Angley and Joseph De Luca.

Q What is the purpose of your trip to Miami on that day?

A The purpose of our trip to Miami?

Q Yes.

A Was to get cocaine.

Q From whom?

A From a banker by the name of Frank Flynn.

Q Did Mr. Flynn call you previous to your trip about the cocaine that you were supposed to buy?

A Yes, we had previous negotiations before this.

Q Prior to your trip, did you negotiate in Miami, Florida, with a James Capotorto?

A Yes, I did.

Q And a Joseph Camperlingo?

Miami Scam

A Yes, I did.

Q And Angelo Bertolotti?

A Yes, I did.

Q Where did those negotiations in Miami take place?

A At--well,one time at Joseph Camperlingo's home, another time at Jospeh Camperlingo across the street from his house his girlfriend by the name of Ann Marchek, I believe her name was, in her apartment and in his home.

Q J & R. Lounge.

A Yes, J & R Lounge.

Q What about the Trojan Bar & Grill?

A And the Trojan Bar & Grill.

Q When you left Narragansett Avenue in the Bronx to go to Miami on December 22nd it was your purpose to go down there to consummate the negotiations?

A To consummate the negotiations for cocaine, yes.

Q How much were you supposed to buy?

A 30 kilos.

Q Was there a discussion about how much you were supposed to pay?

A I believe it was 28,000 a key or 25,000

a key, if I am correct on that figure, somewhere around there.

Q When Mr. Flynn called you on the 21st, the day before--

A Yes.

Q --what did he tell you on the phone?

A He told me that we got the green light which means that the goods, the cocaine was in Miami Beach.

Q Was it your intention when you went down there to buy the goods?

A No, when we went down to Florida we brought about six or seven or eight hand guns with us. We had no intentions of buying at all. We had intentions of stealing it.

Q When you got to Miami on the 22nd, did you and the other six individuals split up and go to different motels and hotels?

A Yes, we landed at the Fort Lauderdale Airport, and Robert Browning, Joseph De Luca, James Angley and Gary Pearson checked in at the Hotel Diplomat which is on I believe Hallandale Boulevard. I don't know if I am right or wrong, if it is on Hallandale Boulevard.

And myself Albert Rossi and Ernest Coraluzzo and Louis LePore checked into the Hemispheres apartments which is a condominium hotel in Hallandale, Florida.

Q That night, did you meet Franklin Flynn at the Hotel Diplomat in Hollywood, Florida?

A Yes, I did.

Q Did you get a room there or did someone have a room in the Hotel Diplomat?

A Yes, we had two adjoining rooms in the Hotel Diplomat where the four parties that I previously mentioned, you know--we had two adjoining rooms there. But we met Franklin Flynn in the main lobby of the Hotel Diplomat.

Q Did you negotiate with Flynn, Franklin Flynn for the cocaine?

A Yes, I did.

Q Was that discussion about price and quantity?

A Well, yes, the price, the quantity. The only thing I was a little perturbed about, he said that it wasn't--to his knowledge that it wasn't 30 keys. He said that it was 26 pounds which means that it was 13 keys. And I told him that the people from New York

would be, you know, wouldn't be satisfied with that.

But he said there was a mixup in--with the people in Chile and the people in Puerto Rico, you know, I guess the smuggling, they couldn't get it through so they only got 26 pounds through.

Q Did Flynn also give you a sample of what he said was the cocaine?

A Yes, he did.

Q Where did he give you the same, if you recall?

A In the main lobby of the Hotel Diplomat, you walk like down and there is public telephone booths and that's where he gave me the sample and I checked it out and I told him that it wasn't to my knowledge what I wanted because it was wet and soggy.

And he says, you know, he'd come back with another sample.

Q On the 23rd, the following day or about the 23rd, did you go to the J & R Lounge?

A Yes, I did.

Q Did you meet there with Franklin Flynn, Angelo Iacona and Roger Silverio?

A Yes, I did.

Q Flynn, Iacona and Silverio were together,

were they not?

A They were together in the J & L Lounge, yes.

Q Did you consummate the deal that was supposed to take place?

A Yes.

Q I'm sorry. Did you fix a date for the transaction to take place?

Sept. 73d

A Right. Well, I wasn't alone at the time. I was with Ernest Coraluzzo, but only we didn't identify Ernest Coraluzzo to Franklin Flynn as Ernest Coraluzzo. We identified him as the buyer with the $800,000, with Louis LePore and Gary Pearson, and we were negotiating it. You know, we were having a few problems.

They said they wanted the money, you know, and then they'd give us the cocaine, but we got that straightened out to make the deal at night that we will come in the Hotel Diplomat which is the annex now. There is the main Hotel Diplomat and there is the annex which is across the street where they would bring the cocaine, 26 pounds of cocaine.

Q Did they come to the hotel that night?

A Yes, they did.

Q Was that Iacona, Silverio and Flynn?

A Yes, they did.

Q Did they have with them a valise containing the cocaine?

A Yes.

Q Did you, Mr. Browning, Mr. Coraluzzo, Mr. LePore, De Luca, Pearson stick them up?

A Yes.

When they entered the room, we had like a glass of water and some tabasco sauce to make it look like we were going to check the cocaine out but, you know, it was all a hoax.

And we identified Robert Browning as the chemist. Because we didn't want to, you know, like them to panic right away. So they opened up the valise and then when we seen the cocaine was there, then we all had hand guns and we took them out and we announced that this was a rip-off.

Q You mean after you had--you tied them up at that point?

A Yes, Robert Browning and Joseph De Luca tied them up. Myself, Ernest Coraluzzo, Louis LePore and Gary Pearson, we had the--The Banker, who I mean as Franklin Flynn, we had his car in custody because

we commanded it the day before.

We put the suitcase with the 26 pounds of cocaine in the trunk of his car and we waited for Robert Browning and Joseph De Luca to finish tying them up and gagging them and whatever they were doing.

I guess they robbed them, too.

Q Did you go from there to the Holiday Inn and from there to Kennedy Airport, New York?

A Yes, from there we went to the Holiday Inn and we had a 1970 Cadillac chauffeured limousine waiting for us.

We left Frank--The Banker, Franklin Flynn's car at the Holiday Inn parking lot. And the six of us got in the limousine with the cocaine and the hand guns and we proceeded to the West Palm Beach vicinity. We--

Q Then after you got to the hotel, did you eventually take the cocaine back to New York?

A Yes, we did.

Q To Kennedy Airport?

A Yes, we did.

Q Were you met at Kennedy Airport by Marilyn Greco?

A Yes, we were.

Q With the goods--

A And Kathy Spangler.

Q Was the cocaine transported to 115 Heights Avenue in Yonkers, New York?

A Yes, they were.

Q Was that the home of Marilyn Greco?

A Yes, it is.

Q That was the entire 26 pounds?

A 26 pounds, yes.

Q Was the cocaine then placed in the--a trap that had been built in Marilyn Greco's house?

A Yes, it was after it was sealed.

Q Who was with you when the goods were transported, the cocaine was transported from Kennedy Airport to Marilyn's house?

A Well, it worked this way.

Marilyn Greco and Kathy Spangler picked us up in a limousine at Kennedy Airport.

Q Who is "us" now?

A Myself and Ernest Coraluzzo got in the limousine.

And we left instructions for Gary Pearson, Robert Browning, Louis LePore and Joseph De Luca to pick up--there were two suitcases now. One with 26

pounds of cocaine in it and one with hand guns in it, which one of the hand guns was registered in The Banker's name which we robbed off him and transported back to New York.

Q You already told us that the cocaine, the 26 pounds was placed in a trap that had been built into the closet in the house of Marilyn Greco, is that right?

A Yes.

Q Did the individual--

A Did you say a closet, Mr. Lavin?

Q Yes.

A It was a trap in the floor in the attic.

Q The next day, was an individual called Jerry Rubin and another individual John Cochise called over to test the cocaine?

A Yes, they were.

Q Because you thought it was synthetic?

A Yes, we thought it wasn't pure cocaine.

Q Who was in the house at that time, do you recall?

Rossi

A Myself, Ernest Coraluzzo, Marilyn Greco, Katherine Spangler, Gary Pearson, Jerry Rubin and John Cochise.

Q Did Mr. Rubin tell you the results of his test?

A Yes, Mr. Rubin said--his exact words, I quote, was that it's the best cocaine he ever seen and he rated it at about 94 to 96 per cent pure.

Q Did you pay Mr. Rubin anything for that?

A We gave him an ounce of pure cocaine.

Q Did Marilyn Greco and Katherin Spangler go to the Cross County Shopping Center the next day or that day?

A Yes, because the cocaine that we transported from Florida to New York evidently I believe came from a foreign country. Whether it was Chile or Colombian, because it still had the foreign newspapers wrapped in it and it came in big plastic bags and what we wanted to do, we wanted to make 28 15-ounce packages. So we asked Kathy Spangler and Marilyn Greco to go to the Westchester County Shopping Center and buy what you call a seal--you know, home sealing machine with a--I guess anybody can buy it, where you seal things. It's a sealing machine, comes with the bags. And she bought the sealing machine and a scale, and we made 28 15-ounce packages of pure cocaine, sealed them and then placed

them in the trap in Marilyn Greco's house.

Q The next day did Ernie Coraluzzo take ten of those packages and give them to his wife?

A Yes, the next day, on or about in the afternoon, Mr. Coraluzzo and myself met Mrs. Anita Coraluzzo in the vicinity of Yonkers and we gave her an attache case which contained 10 15-ounce packages of pure cocaine which she brought--

Q You mean 10 15-ounce packages?

A Yes, ten 15-ounce packages.

Q Was that cocaine and the cocaine that was left later distributed or sold to various people in New York?

A Yes, it was.

Q When you came back from Miami after the theft of the 12 kilos did Mr. Coraluzzo return with you on the plane?

A We all returned on the same flight,yes.

Q Was Mr. Angley on that flight?

A No, he wasn't.

Q Did he go back a day earlier?

A He had to go back a day earlier to take care of other business in New York.

Q Did you have any discussions before you went down about what you were going to do when you got there?

A Yes, we did.

Q With all these people you named?

A Yes, we did.

Q They all knew they were going down there for the purpose of stealing the 12 kilos?

A Yes. 13 kilos.

MR. LAVIN: I have no further questions right now.

THE FOREMAN: You are excused.

(Witness excused.)

(Time noted: 2:50 p.m.)

June 7, 1974

Re: Ernest Coraluzzo, et al.

Albert J. Rossi

3503a

Mr. Lavin

A L B E R T J. R O S S I, called as a witness, having been duly sworn by the Foreman of the Grand Jury, testified as follows:

BY MR. LAVIN:

Q Mr. Rossi, would you please give us your full name, and spell your last. A Albert J. Rossi [spells].

Q Mr. Rossi, you testified at the previous Grand Jury appearance about a trip to Florida and the seizure from other defendants of some twelve kilograms of cocaine. A Yes, I did.

Q Was this cocaine eventually disposed of when you returned to New York? A Yes, it was.

Q Do you know an individual named Eugene Bibbins? A Yes.

Q Did you have a cocaine transaction with Mr. Bibbins? A Yes, I did.

Q Can you tell us when that was. A On or about October or November.

Q Of 1973? A Yes.

Q And what did you sell to Mr. Bibbins? A Uh, quarter Kee of cocaine.

Q When you say, "kee," you mean kilogram? A Quarter kilogram of cocaine, yes. Eight and a quarter ounces.

Q Where was that sold to Bibbins? A In Charles Guida's apartment. I believe it s on Lorillard Place in the Bronx.

Q Did you sell it to him, personally? A No, I didn't.

Q Did you receive any payment from that cocaine? A No, I didn't.

Q Who sold it to him? A Charles Guida.

Q Mr. Guida receive any payment from Mr. -- A As far as I know, no - unless He lied.

Q Do you know an individual named Vincent Artuso? A Yes, I do.

Rossi sale to Artuso for 30,000

Q And Steven Cerea? A Yes, I do.

Q Did you sell two kilograms of cocaine in October or November of 1973 to Mr. Artuso? A Yes, I did.

Q And how much was that for? A Thirty thousand dollars.

Q And did you arrange that transaction, personally, with Mr. Artuso? A Yes, I did.

EC - Cerea present at Rossi - Artuso negotiations

Q Who else was there at the time? A Ernie Coraluzzo and Stevie was present on a couple of occasions.

Q Steven Cerea? A Yes sir.

Q Where did those negotiations take place? A In Stevie's club on 188th Street and Crescent Avenue, I believe, in the Four Winds Bar in Yonkers, and various other places in the Bronx.

DeLuca

Q Who delivered the cocaine to Mr. Artuso, if you know? A I believe Joseph DeLuca.

Q Where did he receive it? A Directly from me.

Q Did you receive payment from Mr. Artuso? A Yes, I received nine thousand dollars in the Four Winds Bar in Yonkers.

EC

Q Did you receive any other money from him? A No, my partner did.

Q Mr. Coraluzzo? A Mr. Ernest Coraluzzo, yes.

Q Do youknow an individual named Louis Guerra [spells]? A Yes, I do.

Rossi sale to Guerra

Q In October or November of 1973 did you sell Mr. Guerra one kilogram of cocaine? A Yes, I did.

Q Where did the transaction take place? A In his home.

Q Did you have the cocaine with you? A Yes, I did.

Q Was that part of the cocaine that was brought up from Florida? A Yes, it was.

10,000

Q How much did he pay you for that? A He paid me and Ernest Coraluzzo ten thousand dollars, and he didn't pay us the other ten thousand for the other half a kee because we owe him ten thousand dollars, so he gave us ten thousand dollars for it.

Joseph LePore

Q Do you know an individual named Joseph Lepore? A Yes, I do.

Q And did you have a transaction involving cocaine again in October or November, 1973? A Yes, I did.

DePasqua

Q Did the first transaction involving Mr. Lapore also involve Anthony DePasqua? A Known as Boots.

Q Yes. A Yes, it did.

Q Where did that take place? A Uh, that took place in Raffaela's Restaurant on West Houston Street in Manhattan.

Q And was the cocaine delivered at that time? A No. We spoke about it, and the cocaine was delivered the next day.

Q Who delivered the cocaine? A Uh, I gave a kilo cocaine to Joseph DeLuca. Joseph DeLuca delivered the kilo of cocaine to Louis Lepore and his brother, Joseph Lepore, went to meet Philly Bags and Boots, and who they sold it to I don't know. I believe some negro.

Q Did you receive payment? A Yes, I did.

Q From whom? A Louis Lepore.

Q How much did you receive? A Twenty thousand dollars

Q Did Mr. Lepore receive any money from that? A Yes he did.

Q How much? A I think two or three thousand dollars I'm not certain.

Q But you had negotiated for that cocaine with Mr. DePasqua, Boots? A Yes, I did.

Q And Mr. Cimmino? A Yes, I did.

Q That was October or November, 1973? A Yes, it was.

Q Did you also have another transaction in October or November of 1973 with Anthony DePasqua, Boots? A Yes.

Q Was that involving an eighth of a kilogram of cocaine? A Yes, it was.

Rossi Sale to ~~Guida~~ DePasqua #2 DePasqua via Guida

Rossi to DePasquale #3

Q And did you arrange that transaction with Mr. DePasqu
A Yes, I did.

Q Who delivered the cocaine? A Charles Guida.

Q And where did he receive it from? A From me.

Q Did you receive payment from that? A Yes, I did.

Q From whom? A From Charles Guida.

Q And again, later on in October, November, did you negotiate with Anthony DePasqua for another quarter kilogram of cocaine? A Yes, I did.

Q Did you deliver that? A Yes, I did.

Q Where did that delivery take place? A The lower Part of Manhattan. I believe on Pine Street, somewhere aroun that vicinity. And I wasn't alone, I was with Louis Lepore.

Q Did you receive payment for that quarter kilogram?
A Yes, I did.

Q How much? A We got screwed out of some money. We only got like two or three thousand dollars, out of eight thousand.

Q Who paid you? A Boots.

Q Mr. De Pasqua? A Mr. DePasqua, yes.

Q Do you know an individual named Jerry Rubin?
A Yes, I do.

Jerry Rubin #2

Q Did Mr. Rubin come to Marilyn Greco's house after you brought the cocaine back from Florida and test the cocaine?
A Yes, he did.

Q Did he receive an ounce of cocaine in payment?
A Yes, he did.

Q That was in September of 1973? A Yes, it was.

Q Did you have another transaction involving a kilogram of cocaine with Mr. Rubin? A Yes, I did.

Q Can you tell us when that took place. A In October, November of 1973.

Q Did you negotiate with Mr. Rubin? A Yes, I did.

Q Where did those negotiations take place? A Uh, in the Spanish restaurant on 49th Street and Second Avenue by the name of La Pluma de Plume [phonetic].

Q Did you agree upon a price for the kilogram? A Yes, we did.

Q How much was that? A Twenty thousand dollars.

Q Was that kilogram delivered by you? A Yes, it was. I gave it to Dominick de Giorgio and Dominick de Giorgio gave it to Jerry Rubin.

Q Did you receive payment for that? A Yes, I did.

Q Where? A Uh, in the Bronx somewhere. It was --

Q Who paid you for it? A Jerry Rubin paid me and my partner some of the money one time, in drips and drabs after that. We got paid.

Q He paid you the entire twenty thousand dollars? A Yes, he did.

Q When you say he paid you and your partner, are you talking about Mr. Coraluzzo? A Ernest Coraluzzo, yes, I am.

Q Do you know an individual named John Doe, Bobby Vise [spells]? A Yes, I do.

Rossi sale to Vise 1/4 K = 6,000

Sale #2 to Vise 1/4 K

Rossi sale to Cosme (Inky) via Pearson + L. Pope 10,000 K = 10,000 to Rossi EC)

Croce sale

Q In October of 1973 did you soll Mr. Vise a quarter kilogram of cocaine at the Club Torreador for six thousand dollars? A Yes, I did.

Q And did you deliver that cocaine to Mr. John Doe, Bobby Vise, personally? A Yes, I did.

Q And was there delivery in November of 1973 of another quarter kilogram? A Yes, there was.

Q That was also to Mr. Vise? A Yes, that was.

Q Did you have negotiations with an individual by the name of Peter Cosme, also known as Inky? A Yes, I did.

Q Can you tell us what those negotiations were about. A Negotiations were about the cocaine we had from Florida. We gave him a sample and he liked it. A gentleman who was in my employment by the name of Pinky - his real name, Gary Pearson - and another gentleman by the name of Louis Lepore sold a half a kee of cocaine to Inky. We charged him ten thousand dollar. Me and my partner, Ernie Coraluzzo, received ten thousand dollars from Pinky and Louis Leporo, and they made a profit on it - I don't know how much of a profit they made. ?

Q Do you know an individual by the name of Pasquale Croce [spells]? A Yes, I do - Fatty Croce.

Q In November of 1973 did you have negotiation with him for the sale of a kilogram of that Florida cocaine?
A Yes, I did.

Q Where did those negotiations take place? A Took

place in one Susan Sherman's - she resides at 500 East 77th Street in Manhattan.

Q And did you deliver a kilogram to Mr. Croce?

A Yes, Mr. Croce came to Susan Sherman's apartment and he received a kilo of cocaine. You want me to tell you what happened?

Q Who was there at the time? A Myself, my partner, Susanna Sherman, a girl by the name of Maria - she's a hooker - and a guy by the name of Cary.

Q Was Maria's last name Marrero? A Yes, it is.

Q And did they subsequently tell you that they went to Boston with that kilogram? A Yes, they did.

Q And they sold a half a kilogram? A Yes, they did.

Q Did they pay you when they came back? A Yes, they did.

Q How much did he pay? A I don't remember the exact figure.

Q Did you pay them anything, those people? A Yes, I paid Patty Croce, I believe it was, six hundred dollars, and I paid Maria four hundred dollars.

Q That was for selling the cocaine? A For selling th half kilo of cocaine, yes.

Q In October of 1973 did you have negotiations with an individual by the name of Thomas Vasta [spells]? A Yes, I did.

Q Were those negotiations for the sale of two or three

kilograms of cocaine? A Yes, they were.

Q Did you ever sell Mr. Vasta those two or three kees? A No, I didn't.

Q Do you know an individual by the name of Susan Sherr? A Yes, I do.

Q And after you brought the cocaine back from Florida, did you store some of that cocaine in her apartment? A Yes, I did.

Q And can you tell us how much that was. A I don't remember the exact amount, but there was always a kee or two kees on hand in her apartment.

Q Do you also know an individual by the name of Joseph Aiello [spells]? A Yes, I do.

Q And in March of 1973 did you sell two or three ounces of cocaine to him? A Yes, I did.

Q Where did you receive that cocaine? A From Louis Guerra.

Q Who delivered it? A Uh, the two or three ounces?

Q Yes. A I think I delivered it. I gave it to Mr. Aiello, the two or three ounces.

Q Do you know a girl by the name of Cathy Spangler [spells[? A Yes, I do.

Q Was she a friend of Maria Marrero? A Yes, she was.

Q Were you subsequently arrested in October of -- I'm sorry. Were you indicted in October of 1973? A Yes,

I was.

Q And as a result of that indictment, did you do anything about the cocaine that was still in Marilyn Greco's apartment? A Yes. We felt that the FBI, the local authorities, were going to raid Marilyn Greco's apartment, so we told Cathy Spangler and Maria - I don't know her last name, I can't pronounce - to go to Marilyn Greco's apartment and take the remainder of the cocaine that was there, and they wanted to take it --

What happened to EC/AC 150 grs.?

[Continued by RSK]

RSK-1
ApSp'72#1

Rel EJC

June 7, 1974
Re: Ernest Coraluzzo, et al.

MR. LAVIN

Witness: ALBERT J. ROSSI.

Q What happened to the cocaine? A I think it was anywhere from eleven to thirteen pounds; I don't remember.

Q Who instructed them to go in there?
A Me and Ernie Coraluzzo.

Q Did they pick up the cocaine? A Yes, they did.

Q What did they do with it? A Ernie and I were on the lam, and we stood at Jim Angley's girl friend's apartment - somewhere in the Riverdale section - and Cathy Spangler and Maria Marrero brought eleven or twelve or thirteen pounds of cocaine to me, Ernie Coraluzzo and Jim Angley at Jim Angley's girl friend's apartment.

Q Do you know an individual by the name of Daniel Arnold? A Yes, I do.

Q Did you have negotiations with Mr. Arnold in December of 1973? A Yes, I did.

Q About the sale of half a kilogram of cocaine?
A Yes, I did.

Q Was that sold to Mr. Arnold?
A Yes, it was.

Q By whom? A By Charles Guida.

Q Who gave the cocaine to Mr. Guida? A I did.

Q That was as a result of the negotiations with Mr. Arnold? A Yes, it was.

Q Did you receive payment for that cocaine? A Yes, I did.

Q How much was it? A I think it was nine or ten thousand dollars.

Q Do you know an individual by the nickname of "Harry the Beard"? A Yes, I do.

Q In October of - or November of 1973, did you sell Mr. "Beard" a quarter kilogram of cocaine? A Yes, I did.

Q Did you deliver that? A Yes, I delivered it to Mr. Lepore, and Mr. Lepore gave it to Harry the Beard.

Q Did you receive payment ? A I believe I did.

Q From whom? A From Mr. Lepore.

Q But you weren't present when you delivered it to Mr. Beard? A No, I wasn't.

Q Do you also know an individual, John Doe, whose nickname was "John the Hippy"? A Yes.

Q Did you sell that individual a kilogram of cocaine? A Yes, I did.

Q Where did that take place? A In the New York vicinity. I know where we met him to receive payment. We met him, - me and my partner, Ernie Coraluzzo, and Cathy Stangler, - at Gimbel's Warehouse, and I think he gave us

something like $17- or $18,500.

Q Who delivered the cocaine to him? A I think Mr. Coraluzzo.

Q Were you present? A No, I wasn't.

Q Were you present when he paid for that cocaine? A Yes, I was.

Q Do you know an individual by the name of James Lombardo? A Yes, I do.

Q Did there come a time when Mr. Lombardo delivered two kilograms of cocaine to you in Florida? A Yes, he did.

Q Did Mr. Lombardo say where he got the cocaine? A Yes. I instructed Mr. Lombardo to go to New York. It was either La Guardia Airport or Kennedy Airport, - where he met Mr. Luis Guerra, and Mr. Luis Guerra gave him two kilograms of cocaine, and Mr. Lombardo came back to Florida with the two kilograms of cocaine and delivered it to me.

Q When was that? A Some time last year.

Q Was it prior to September of 1973? A Yes, it was.

MR. LAVIN: I have no further questions of the witness.

FOREMAN: You're excused.

(WITNESS LEAVES ROOM)

A L B E R T R O S S I, called as a witness, having been duly sworn by the Deputy Foreman of the Grand Jury, testified as follows:

BY MR. REILLY:

Q Would you give your full name to the reporter, please.

A Albert Rossi.

Q Are you the same Albert Rossi who appeared before a Grand Jury in this Court House on May 10, 1974, and June 7, 1974, in the matter of United States versus Ernest Coralluzzo and others? A I am.

Q Were you questioned by James Lavin at that time?

A Yes, I was.

Q I'm going to show you two Grand Jury Exhibits of today's date, Grand Jury Exhibit No. 1 and No. 2, and I'll ask you whether you've had an opportunity to review those two transcripts of testimony. A Yes, I did.

Q And were these the answers that you gave to the Grand Jury reporter at that time when you testified? A Yes, they were.

Q And were the answers given by you at that time true and accurate? A Yes.

Q And are those answers still true and accurate today?

A Yes, but there's two minor -- minor mistakes.

Q All right, what's that? A One mistake is that it says that I definitely said that I gave cocaine, two kilos of cocaine, to Joseph DeLuca to give to Steven Cerea and

Vincent Artuso. Now, I don't know if I gave it or my partner gave it, but it was given; but at that time I definitely said that I had, that I gave it, but I definitely don't remember who gave it; and when we came back from Miami Beach, Florida, and the cocaine was being tested at Marilyn Greco's house, I don't recollect if Gary Pearson was present, but the other four parties were present.

Q Did you give a sample of cocaine to Mr. Peter Cosme at any time? A Yes, I did.

Q When do you recall giving that sample to him?
A I believe in May or June.

Q And did you subsequently arrange for the sale of one half a kilogram of cocaine to Mr. Cosme? A Yes, I did.

Q Was that from the Florida cocaine? A Yes, it was.

Q I have no further questions at this time. I'm going to ask you -- oh, yes, I do. Toward the end of May or the beginning of June, 1973, did a Mr. James Capotorto and Raymond Thompson come from New York to Florida to buy cocaine from you?
A Yes, they did.

Q Did you and Ernie Coralluzzo deliver two kilograms of cocaine to Mr. Capotorto and Raymond Thompson at your mother's house on Narragansett Avenue in the Bronx? A Yes, we did.

Q Where did you get those two kilograms of cocaine?
A From Miami Beach, Florida, the cocaine that we stole.

Q When did you -- this was the end of May and June of '73? A Oh, excuse me, I'm sorry. From Louis Guerra. I'm sorry.

Q Did Capotorto and Thompson give you seventeen thousand to nineteen thousand dollars as part payment for the cocaine?
A Yes, they did.

Q Did Capotorto and Thompson tell you that this money had been put together from several sources, including themselve and Joseph Camperlingo and Angelo Bertolotti? A Yes, they did.

Q Later that summer, in June, in Miami, Florida, did Capotorto and Thomson give you an additional five thousand dollars in payment for those two kilograms of cocaine? A Yes, they did.

Q While you were in Florida, did you discuss the sale of these two kilograms of cocaine with Joseph Camperlingo, Angelo Bertolotti, James Capotorto and Raymond Thompson?
A Yes, I did.

Q Now, I have no further questions at this time. I'm going to ask you to be temporarily excused by the Foreman, and you may be called back for additional questions shortly.

FOREMAN: You're excused.

Q Would you just step outside.

[WITNESS EXCUSED]

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how you sentence, your Honor, but it was a question specifically with regard to Mr. DeLuca. I obviously was not going to ask for a commitment from the Court, but what I would be concerned about in conveying back to him the decision as to whether or not to plead in this matter would be more of an indication that based upon a hypothetical set of facts, the Court would have certain inclinations.

THE COURT: No.

MR. MICHAEL WEINSTEIN: I appreciate that.

(In open court.)

THE COURT: Are you ready to proceed?

MR. LAVIN: Yes, your Honor.

If I may. On Friday we had some grand jury testimony which was finally typed, in fact on Sunday, last night. In that grand jury testimony there was the testimony of Albert Rossi --

THE COURT: I do not see Mr. Rooney here. Are all counsel here?

MR. LAVIN: Mr. Kossman, who is here, is attorney of record for the two defendants.

THE COURT: All right.

MR. LAVIN: On Sunday night the grand jury stenographer finished typing Albert Rossi's grand jury minutes and they were presented to us about 6:00 o'clock, and

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as we were locking through them we discovered that Mr. Thompson was not mentioned in any of the grand jury minutes up to that time, although he was in the indictment. This morning, Mr. Rossi appeared before the grand jury and testified and the grand jury handed down a new indictment which is 75 Cr. 5. In addition to that, we changed the name of Mr. Cerea to the correct spelling, Mr. Bibbens to the correct spelling. Deleted Mr. Louis Lepore since he had already pled to the previous indictment, and changed some dates to conform to the bill of particulars. There have been no addition of any overt acts, there have been no changes in any of the overt acts except the deletion of one. There have been no addition of any counts or any change of defendants in any counts. So, for all intents and purposes, the indictment, 75 Cr. 5 is identical with 74 Cr. 620.

THE COURT: May I see it.

What are the changes again?

MR. LAVIN: The spelling of two names. Cerea and Bibbens have been corrected. Louis Lepore has been deleted as a defendant from the superseding indictment since he had pled to the previous indictment.

Overt Act No. 13 in the old indictment was not in this indictment as it was -- there was an error in the original indictment. There have been some changes in the

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dates to conform --

THE COURT: There is an overt act in this indictment, 13.

MR. LAVIN: That was 14 in the old indictment. We deleted 13 in the new one, so the old 14 is now 13.

THE COURT: That is the substantive change?

MR. LAVIN: Yes, your Honor.

THE COURT: All right.

What are you rising for?

MR. ALAN WEINSTEIN: I would like to be heard since it was my client that was directly affected. That is why I am rising. And I have some other matters which have come up which require that I take up with the Court on the record.

MR. VICTOR: I rise also, your Honor.

THE COURT: I don't understand. All right, you tell me. I didn't understand your client was affected by this at all. You knew there was some testimony before -- oh, yes, there was some testimony before the grand jury that involved your client, is that what you -- that is what you tell me?

MR. LAVIN: Your Honor, there was no testimony -- Mr. Thompson's name was not mentioned in the grand jury, before the grand jury which handed down --

THE COURT: The original indictment. He is now

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mentioned?

MR. LAVIN: Yes.

MR. ALAN WEINSTEIN: Your Honor, what I started to say as Mr. Lavin mentioned to the Court, Mr. Thompson would have been, I submit, subject to a motion for a dismissal based on the grand jury testimony which I received this morning from Mr. Lavin under 3500, wherein he was never mentioned anywhere throughout the entire testimony. I submit that the original indictment against Mr. Thompson was a nullity and he would have been properly subject to being stricken therefrom and dismissed from this case. This is the first valid indictment brought forth against him. I obviously have not yet received the grand jury testimony that Mr. Rossi made under 3500 to bring Mr. Thompson in. I submit that your Honor should at this point grant as to Mr. Thompson a motion for a continuance.

He has not yet pled to this second indictment. I have not yet filed motions in the second indictment. I have not yet been able to attack this second indictment.

THE COURT: Oh, come on, Mr. Weinstein. The only thing you have any right to file any motions about in terms of the indictment is the issue that there was some testimony about your client in the grand jury. Come, let's be reasonable about these matters.

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MR. ALAN WEINSTEIN: How about Mr. Capotorto? There was no testimony presented to the grand jury --

THE COURT: I suggest that you keep on with whatever objections you are going to make in regard to Mr. Thompson. The issue as far as Mr. Capotorto is obviously supercilious.

MR. ALAN WEINSTEIN: The position Mr. Thompson finds himself in, I submit, is basically prejudicial, that the government has not yet even supplied me the grand jury testimony with respect to him and I am not ready to proceed to trial on behalf of Mr. Thompson on this superseding indictment, 75 Cr. 5, and respectfully request a continuance and time to file appropriate motions on behalf of Mr. Thompson.

THE COURT: All right, Mr. Lavin. When are the grand jury minutes --

MR. LAVIN: They are typing them right now, your Honor. I really -- Mr. Weinstein has received all the discovery on 74 Cr. 620 for Mr. Thompson.

THE COURT: You are telling me the only difference, either in terms of testimony and so forth, is that Mr. Thompson's name has now for the first time been mentioned to the grand jury?

MR. LAVIN: And transaction involving

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Mr. Thompson.

THE COURT: But in terms of the discovery material, did you give that to Mr. Weinstein?

MR. LAVIN: That is correct, your Honor. There is no additional material as a result of the indictment today. And that will be turned over -- it will be turned over as soon as it is typed, which will be finished today. It will be turned over tomorrow morning.

THE COURT: All right, I will hold that in abeyance until you get an opportunity, Mr. Weinstein, to look at the grand jury testimony. Your motion -- I am withholding decision on your motion and giving you an opportunity to look at the minutes.

MR. ALAN WEINSTEIN: Your Honor, there are two other matters I wish to bring to the Court's attention on the record.

One, I would like time, whether your Honor wants me to do it now or later, I would like to proffer into the record, since your Honor would not conduct a hearing, I would like to proffer into the record my testimony on my statement regarding my both clients being indigent and my request which your Honor has already ruled on. I would like to make a proffer into the record.

THE COURT: I will not take any time with that.

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If you want to do that, go to the Magistrate. Go to the Magistrate and make your proof of indigency. You should have done that before.

MR. ALAN WEINSTEIN: Based on the government's assertion immediately preceding the recess that they are going to have a case agent or request one, and your Honor's indication that that would be allowed --

THE COURT: Have a what agent here?

MR. ALAN WEINSTEIN: A government case agent.

THE COURT: They said they wanted to have this man sit at the table and he was not going to be a witness.

MR. ALAN WEINSTEIN: I didn't hear them say he was not going to be a witness.

THE COURT: That is what they said.

MR. ALAN WEINSTEIN: Then I have nothing further to say on that.

MR. KOSSMAN: I would like to call to the Court's attention the fact that the second indictment, this new indictment, the first three lines, from on or about the 1st day of January, 1973, and continuously thereafter up to including the date of the filing of this indictment, which I understood would place -- when, today?

MR. LAVIN: Today.

MR. KOSSMAN: Changes in a most material way what

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had taken place. In the first indictment a year ago it was from on or about the 1st day of January, 1973 and continuously thereafter up to and including the date of the filing of this indictment, which was 1974. Now, that is a year ago.

THE COURT: It wasn't exactly a year ago, was it?

MR. KOSSMAN: Well, whenever --

THE COURT: It is a little less than a year. When was the original indictment, in July?

MR. LAVIN: June, your Honor. The government would consent to have that date in June, the date of filing of the original indictment, be considered as the date that this conspiracy terminated and not January 5, 1975.

THE COURT: Did you hear that?

MR. KOSSMAN: If that -- I didn't want to be caught by --

THE COURT: What date is that, June what? We will assume that the indictment is amended to read up to and including June 17, 1974.

MR. LAVIN: June 18th.

THE COURT: All right, June 18th.

MR. KOSSMAN: I have no further problem.

MR. STOKAMER: If your Honor please, I represent the defendant Bibbens. Although Mr. Lavin has characterized the change in the new indictment with respect to my client

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as merely being a correction of spelling, it appears to me that he has indicted somebody else or at least he has indicted my client under a completely different name. My client, as this Court is probably aware, is not charged in any substantive count. I am sure that a fair amount of hearsay with respect to my client would be attempted to be presented in this court. In any event, I suspect that there may be some significant result, or at least my client might well be affected by the change of name. I don't know what exactly my remedy at this point is because I don't know exactly what I think the significance will be, but I would ask for a continuance so I can discuss it with my client and investigate --

THE COURT: That is denied. It seems to me if the change in giving your client his correct name adversely affects him in any way, that you can legitimize it in terms of a motion, at the time you make it.

(Continued on next page.)

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But I am not going to hear any motions that you don't know for what the changes are. If, in fact, you find that you can articulate any prejudice to your client, I'll listen to it at that time.

MR. VICTOR: Your Honor, I am the attorney for the defendant Cerea. There has been a material amendment of the indictment. They have now alleged in the third count of the indictment a new date. The original indictment contained an allegation that the crime was allegedly committed in October of 1973. There are now alleging November of 1973. It is difficult enough to prepare a defense, your Honor, in view of the fact that the defendant was arrested almost eight months after the alleged crime took place. This last-minute amendment creates --

MR. LAVIN: I will explain that if I may, as soon as Mr. Victor finishes.

MR. VICTOR: In view of this material alteration and for all the reasons I have already stated in my motion for a severance and for reasons also stated by my co-counsel herein, I would ask for a continuance and a severance.

MR. LAVIN: I said there were some changes in the dates to conform to the bill of particulars which the government supplied. In the bill of particulars that third count, the date was November 19 --

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THE COURT: When was that bill of particulars supplied to Mr. Victor?

MR. LAVIN: On or about November 18th, 1974. That is the day it was filed with the court.

THE COURT: Motion denied.

MR. WILLIAM RICHMAN: It may be superfluous at this time --

THE COURT: I will suggest you not make it at this time. I told you if your client goes to trial, you will reserve all your rights and make your motion at that time.

Is this Mr. Hurwitz?

MR. HURWITZ: Yes, your Honor. I represent Miss Marrero.

THE COURT: I know who you represent. I think I know who you represent.

MR. HURWITZ: In light of the representations made by the government as to the nature in which this indictment was returned today, I make the motion to dismiss as to my client if we are going to proceed on this indictment.

As your Honor knows, and if as Mr. Lavin has suggested, that the only change before the grand jury in Rossi's testimony was that he named on this occasion Thompson, who for some reason was not even testified to

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before the last grand jury but nevertheless, he got named in the indictment, then, as to my client there appears to be no non-hearsay testimony before this grand jury. If that is accurate, then I don't think this indictment is proper. I think it is defective and I would move to dismiss.

THE COURT: That motion is denied. I do not go behind the grand jury indictments. The motion is denied. I think Mr. Katz had his hand up?

MR. LEFCOURT: Your Honor, I would like to point out to the Court as to Mr. Guerra, there has been a change in a month. This was the subject of a prior motion which I briefed estensively and there are Circuit cases which hold, your Honor, that a change of this sort, namely a month's difference in an allegation would require dismissal.

THE COURT: The problem about that, I am only going to listen to that, Mr. Lefcourt -- I am going to assume unless I am told to the contrary, if the same thing occurred in your instance as has happened in respect to the earlier discussion, and that is, you were supplied with a bill of particulars that set the time as November, you were supplied that in November.

MR. LEFCOURT: I made my motion after I received the bill of particulars.

THE COURT: The motion was denied at that time

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and it is denied now.

MR. LEFCOURT: On the severance and continuance questions, I think the best evidence of a spillover in such a mass trial is that somebody could be indicted and facing substantial jail time when not even mentioned in a grand jury.

THE COURT: The only problem with that is, that is about a defendant who is not your client.

Let us proceed. We are here this afternoon for a minimization hearing.

Are you ready to proceed?

MR. LAVIN: Yes.

THE COURT: I understand there are some of you who are not involved.

MR. LAVIN: If I may, your Honor, I can tell the Court --

THE COURT: How long will it take, will it take the rest of the day?

MR. LAVIN: I hope not. The only two defendants left who haven't pled are -- who appear on the wiretap at all are Mr. Guerra, Anita Coraluzzo and Mr. Capotorto.

THE COURT: Mr Weinstein made a motion about Mr. Capotorto this morning.

MR. LAVIN: They are the only ones oustanding

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and I think the only one who --

THE COURT: Under those circumstances it appears to me anyone who wants to leave who is not involved -- I doubt that we would be able to do anything this afternoon. So if any of the rest of you want to leave, you may want to use this time to read your 3500 material, you may get some advantage from that. You are free to go or remain. It seems to me, and some of you have indicated you need time to go over the material, you may take advantage of this opportunity. We will start tomorrow, as every morning, at 10:00 o'clock.

MR. LAVIN: Your Honor, I don't know if this would be an appropriate time to have the defendants plead to the new indictment or tomorrow morning.

THE COURT: I suppose we ought to get that over with. We might as well get that over with.

Mr. Weinstein. You are representing Mr. DeLuca and how does he plead?

MR. MICHAEL WEINSTEIN: Your Honor, Mr. DeLuca pleads not guilty to the charges in the indictment.

THE COURT: Mr. Richman?

MR. MURRAY RICHMAN: The defendant Angley pleads not guilty, your Honor.

THE COURT: Your client is Mr. Angley?

MR. MURRAY RICHMAN: That is correct.

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THE COURT: Mr. Weinstein, Mr. Capotorto and Mr. Thompson?

MR. ALAN WEINSTEIN: On behalf of Mr. Capotorto, he pleads not guilty.

On behalf of Mr. Thompson, specifically reserving his rights previously raised, he will also plead not guilty.

THE COURT: Mr. Kossman, on behalf of Mr. Bertolotti and Mr. Camperlingo.

MR. KOSSMAN: Both defendants plead not guilty, your Honor.

THE COURT: Mr. Stokamer?

MR. STOKAMER: The defendant Bibbens pleads not guilty, your Honor.

THE COURT: Mr. Victor?

MR. VICTOR: Mr. Cerea pleads not guilty.

THE COURT: Mr. Richman?

MR. WILLIAM RICHMAN: Mr. Joseph Lepore pleads not guilty. I stress the word Joseph.

THE COURT: Mr. Schwartz?

MR. SCHWARTZ: Mr. Cosme pleads not guilty.

THE COURT: Mr. Frankel?

MR. FRANKEL: I should like to know from the District Attorney whether any evidence was presented to the

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grand jury that voted an indictment this morning, whether any testimony was presented against my client and whether it was the same jur that originally voted -- that voted in the original indictment.

THE COURT: Do you want to answer that question?

MR. LAVIN: No, your Honor, I don't. I don't see what value it has at all. I don't think Mr. Frankel is entitled to know --

THE COURT: As I understand it, Mr. Frankel, the only new testimony, I understand, has come in was the testimony involving Mr. Thompson and I gather that the testimony -- that is all I heard.

MR. LAVIN: I believe that is it. I haven't seen it and it will be available tomorrow morning.

MR. FRANKEL: I want to know, too, if this is the same jury that voted the original indictment. The same grand jury.

THE COURT: What difference does that make?

MR. FRANKEL: Well, if it is not the same jury, there is no case against any of the defendants by this new grand jury and this new indictment which we are being asked to plead to.

THE COURT: I am not going to rule on that. You'd better brief that and submit something.

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How does your client plead?

MR. FRANKEL: We refuse to plead at this time until we have an answer to the question.

THE COURT: How does your client plead?

MR. FRANKEL: The client is not pleading to that indictment, your Honor.

THE COURT: He is going to plead to that indictment now.

MR. FRANKEL: If your Honor cares to enter a plea of not guilty for him, that is your prerogative. As his attorney I refuse to enter a plea to what I believe to be an invalid indictment.

THE COURT: You don't know whether it's valid or not. Enter a plea of not guilty.

Mr. Hurwitz?

MR. HURWITZ: Miss Marrero pleads not guilty.

THE COURT: Mr. Panzer?

MR. PANZER: Miss Sherman pleads not guilty. I reserve all motions I made on the other indictment and join in all appliations made by co-counsel.

THE COURT: Mr. Panzer, did I agree with you I was going to hear some testimony in my robing room or was it Mr. Hurwitz?

MR. HURWITZ: No, it was I. I would appreciate it

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if your Honor heard that application prior to the beginning of the minimization hearing, if your Honor can fit it in.

THE COURT: I think if it is going to affect -- all right, I think I will be amenable to doing that.

MR. HURWITZ: Thank you.

THE COURT: Mr. Panzer, your client speaks Spanish?

MR. PANZER: She speaks Spanish. I have gotten an interpreter who will be here tomorrow morning.

THE COURT: Mr. Levenson.

MR. LEVENSON: Your Honor, Miss Greco pleads not guilty, but reserves all rights to challenge the validity of the indictment and joins in all motions made by co-counsel in respect thereto.

THE COURT: Mr. Goldberger.

MR. GOLDBERGER: Mr. Cimmino pleads not guilty.

THE COURT: Mr. Epstein?

MR. EPSTEIN: Mr. Arnold would waive the detailed reading of the indictment and pleads not guilty.

THE COURT: Mr. Lefcourt?

MR. LEFCOURT: Mr. Guerra pleads not guilty.

THE COURT: Mr. Katz?

MR. KATZ: Miss Anita Coraluzzo pleads not guilty.

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THE COURT: Mr. Baraban?

MR. BARABAN: Miss Spangler pleads not guilty and specifically reserves the right to attack the indictment.

THE COURT: I think, then, what I will do is to go in the robing room and hear Mr. Hurwitz and his client and then after I have completed that, I will go to the minimization hearing. No one is required to be here unless they want to be in regard to that except obviously, the defendants and their attorneys who are involved. We will resume tomorrow morning at 10:00 if the minimization hearing is concluded. We will start the process of the selection of the jury at 10:00 o'clock tomorrow morning. I trust that before the day is over that you will indicate to me, at least by tomorrow morning, what two representatives among the defendants' counsel you have chosen to act as lead counsel.

MR. LEVENSON: Your Honor, when there are matters that involve all counsel, it seems most appropriate that the first counsel who has anything to say can say it and it obviously won't be repeated by the other counsel. I don't see why it is necessary to give up our rights --

THE COURT: I don't think you are giving up anything. It just seems to me, Mr. Levenson, that in terms of arrangements or anything like that, it is a simple thing, it is easier for me to handle. I think it is better for you

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I am not encouraging it, but I was advised that a number of you wanted to make substantive motions.

MR. PANZER: Before we get to opening statements, if I may thrust one substantive motion I want to make with respect to my client.

With respect to my client, Miss Sue Sherman, I move to dismiss the indictment which indicates on the basis that there was no probable cause presented before the grand jury.

THE COURT: Come, Mr. Panzer, I am not going over those motions again.

MR. PANZER: This is different, your Honor, if you will let me finish.

THE COURT: You made such a motion on Monday.

MR. PANZER: I did not. I did not have 3503A, which was just supplied me by the government, which showed what happened before the grand jury.

THE COURT: You argued the same thing before me on Monday.

MR. PANZER: That is not true. I did not make this specific motion.

THE COURT: We will consider it made. Somebody made the motion there was insufficient evidence

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before the grand jury, and it was made on that side of of the room. Maybe you didn't make it. In any event, it has been made.

MR. PANZER: To protect the record, I am asking 3503A be deemed made part of the record for the purpose of this specific motion.

I am also asking your Honor make an in-camera inspection of any other grand jury testimony to determine whether there was probable cause before the grand jury. If the government will concede that the only testimony before the grand jury with respect to Miss Susana Sherman was 3503A, then that is all I want to place in the record and it will be sufficient and it will not necessitate your Honor making an in-camera inspection.

THE COURT: Mr. Lavin, do you have anything to say.

MR. LAVIN: I don't think I should have to answer at this point whether or not there was other evidence before the grand jury.

THE COURT: You have an answer.

MR. PANZER: May I have 3503A marked as part of the record of this case?

THE COURT: For the purposes of this motion?

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MR. PANZER: Yes.

THE COURT: Yes, you may have it marked for the purpose of this motion and for other purposes, yes.

MR. PANZER: Will your Honor endeavor to make an in-camera inspection?

THE COURT: You have given me nothing as a basis to make an in-camera inspection.

MR. PANZER: If your Honor reads page EG-7 and EGC-8, that that is all the evidence that I am aware of that was presented to the grand jury with respect to Susana Sherman, and as far as I am concerned a careful reading of this indicates to me there was no probable cause presented to that grand jury.

THE COURT: If that is the basis on which you are making your motion I think I am correct that it is not either in my power or my obligation to go behind the grand jury with respect to making a determination and second guess them. As far as I am concerned, the motion is denied.

Your record will be protected, obviously, for purposes of appeal.

MR. PANZER: Can I have 3503A marked, your Honor, as Defendant's Exhibit A for the purpose of

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this motion?

THE COURT: It will be done. My deputy court clerk apparently is out.

MR. VICTOR: Your Honor, on behalf of the defendant Steven Crea, my name is Paul Victor, I join in that application. I also request that 3503A and 3510 be marked as defendants' Exhibits.

The 3500 material to which I have just referred reflects the only evidence against Steven Crea was he was present during the time when the witness Rossi discussed a narcotics transaction with somebody else. That is the only thing before this grand jury, his mere presence, and I also move to dismiss based upon the insufficiency of the testimony before the grand jury.

THE COURT: The motion is denied.

I will hear from you, Mr. Levenson.

MR. LEVENSON: With respect to my client, Marilyn Greco, I have two motions. One motion will be covered I think extensively by Mr. Lefcourt and I will defer to him, and that is with respect to the scope of the conspiracy or conspiracies which will be offered here. I won't go into that at this time.

With respect to the second motion, I think

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a little background might be of some help. There is alleged by the government that a machine gun with a silencer and a case of hand grenades were found in Miss Greco's home and back yard. Now, I see this material mentioned in the 3500 material and I ask the court to direct the U. S. attorney not to mention or make reference to this machine gun and to these hand grenades in his opening nor to permit the introduction of any mention of this at the trial.

I might mention that Miss Greco has been indicted for possession of a machine gun, the machine gun that was allegedly found in her home, that the case is still pending, and that it is not properly part of the indictment which is being tried here.

MR. LAVIN: I have no problem with that at all. I am not going to introduce the gun or the hand grenades. It is not going to be referred to in Mr. Reilly's opening statement.

MR. LEVENSON: I didn't hear that.

THE COURT: He said he has no problem with that request. He is not going to mention the gun and is not going to introduce it or make reference to it.

MR. LEVENSON: Fine.

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MR. A. WEINSTEIN: If it please the court, yesterday your Honor, in noting our objections to those questions not asked, asked us to remind you at this time and request that the defendants Capotorto and Thompson requests --

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THE COURT: I think that has been marked. Here they are. Yours has been marked as Capotorto and Thompson Exhibit 1, Greco's has been marked as Exhibits 1, 2, 3 and 4, and Marrero has been marked as Marrero Exhibit No. 1.

MR. A. WEINSTEIN: Thank you, your Honor. There are additional matters.

As to the motions made by the two previous counsel, I join in them with one further request that they did not ask, that you mark 3503. I ask that that be marked also.

THE COURT: Was it 3503-A?

MR. A. WEINSTEIN: I have 3503, 3503-A and 3510, all of the grand jury testimony of Mr. Rossi. I would ask all of it be marked for purposes of my motion.

I would point out as to Mr. Thompson only, it has not been made before, I just received it this morning, as to Mr. Thompson only the government candidly told this Court that absolutely no testimony was presented as to Mr. Thompson. That's why they brought back the second indictment against him. The second indictment is exactly the same as the first indictment and yet Mr. Rossi's testimony before the grand jury upon which this indictment was predicated concerned acts which occurred before, and I repeat before, the time Mr. Thompson is charged with any-

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thing. The testimony Mr. Rossi gave before the grand jury reflected in 3510 in no way concerns itself with anything Mr. Thompson is charged with in the indictment.

Therefore, I move to dismiss on behalf of Mr. Thompson on that basis.

THE COURT: The motion is denied.

MR. A. WEINSTEIN: Your Honor indicated the other day -- this is a separate matter. I filed a 3504 motion, 18 U.S. Code, Section 3504. Your Honor in October ordered the government to comply. Your Honor further ordered the government to comply on Monday. As of yet I have received no response and this trial is about to commence.

THE COURT: What are you referring to?

MR. A. WEINSTEIN: The inter-agency search between all agencies of the Federal Government.

THE COURT: That is absolutely correct.

MR. LAVIN: Your Honor, we are making attempts to contact the Justice Department and have all the agencies conduct a search of their records for a wiretap. We haven't gotten that information yet. It is going to take a while.

We have no knowledge. There were no other wiretaps, to our knowledge, in this case.

THE COURT: We will proceed, but that inquiry

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should have been made before and if anything does turn up, you jeopardize the trial. We will proceed.

MR. A. WEINSTEIN: Just a couple of matters you left in abeyance the other day.

As to the psychiatric report concerning Mr. Albert Rossi, your Honor ruled on my motion to have him examined and you denied it, then giving me the right to raise it again before he testified once we got the psychiatric report from Bellevue, and you ordered the government to produce that. I don't have that either.

THE COURT: I think that I indicated to you, Mr. Weinstein, and I gather that Mr. Lavin has indicated he is going to furnish you with that material some time prior to the time that Mr. Rossi testified.

I don't know what his schedule is. He will furnish it to you and you will be entitled to use it.

MR. A. WEINSTEIN: Thank you, sir.

Your Honor, just for the record, so the record is clear, I have concern about Mr. James Harris, an DEA agent. I have discussed with Mr. Lavin --

THE COURT: Who?

MR. A. WEINSTEIN: H-a-r-r-i-s. He is a Drug Enforcement Agency agent.

I have discussed with Mr. Lavin my desire to have

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him present. Mr. Lavin has affirmatively indicated to me he would be here so there is not a necessity for me to issue a subpoena. I would like it known he will be here and when he is going to testify for the government, I don't want him released.

THE COURT: Why do you waste time like that?

MR. A. WEINSTEIN: It is not on the record, sir.

THE COURT: Mr. Lavin, if he has made a promise to you, I would assume you are going to be able to take it it is going to be done. If it doesn't happen, I will take care of it.

MR. A. WEINSTEIN: Last but not least, your Honor, on behalf of the defendant, I would invoke the rule formally and request you instruct all witnesses as to their obligations under the rule.

THE COURT: I gathered by that rather cryptic language you mean you would like to have all the witnesses excluded. Is that right?

MR. A. WEINSTEIN: Yes. The term used in the Southern Bar is invoking the rule. I mean the exclusion rule.

THE COURT: All witnesses for the defendants and all witnesses for the government will be excluded until they testify. Then there will be some question

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as to whether they can sit in even after they testify. If there is anybody here who is going to be a witness, now is the time for them to leave.

MR. W. RICHMAN: The defendant Joseph Lepore has made an application to your Honor prior to the luncheon recess. The United States Attorney stated they would prefer to wait until after a jury was selected and sworn, which has already been done. Papers have been submitted to your Honor prior to the opening of court.

THE COURT: What was submitted to me?

MR. W. RICHMAN: I am sorry, Judge.

THE COURT: What was submitted to me?

MR. W. RICHMAN: Papers have been submitted to you based on an affidavit --

THE COURT: I haven't received them.

MR. W. RICHMAN: I asked Clark McCullough to bring them in to you while you were in the robing room.

THE COURT: I haven't received them.

Have you been served with them?

MR. LAVIN: No. I don't know what Mr. Richman is talking about.

THE COURT: If you are going to give me an order, you should give Mr. Lavin a copy.

MR. W. RICHMAN: I will give him a copy.

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THE COURT: You did?

MR. W.RICHMAN: I have not. All the papers went into the robing room through Mr. McCullough at 2.25.

THE COURT: Let me hear from Mr.Baraban. They are checking on it. We will deal with that problem.

MR. BARABAN: Very briefly, your Honor, I would like to join in Mr. Panzer's motion on behalf of my client, Kathy Spangler, and have made a part of the record 3503 and 3503-A.

MR. FRANKEL: May I be permitted to join in the motion made by Mr. Panzer?

THE COURT: Gentlemen, I think I indicated to you earlier that any motions made on behalf of any defendant in this case inures automatically to the benefit of the others unless you make a special disclaimer.

MR. FRANKEL: Except Mr. Panzer made it specifically only for his client. That's what bothered me. Thank you.

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MR. REILLY: The Government has nothing to add, your Honor.

THE COURT: Mr. Thompson?

DEFENDANT THOMPSON: No, sir.

THE COURT: All right, Mr. Thompson, I am going to sentence you to five years and $5,000 committed fine.

THE CLERK: United States versus James Capotorto.

MR. EPSTEIN: Good morning, your Honor.

THE COURT: Good morning, Mr. Epstein.

MR. EPSTEIN: Your Honor, on behalf of Mr. Capotorto, let me state at the outset that I had the opportunity to review the pre-sentence report, which was prepared in this case, on Friday, February 28th.

Concerning the report itself, I only have the following comments:

The reports sets forth that it was in fact Mr. Capotorto who introduced one Albert Rossi to Franklin Flynn, the Florida cocaine connection.

My recollection of the testimony at trial was that Mr. Rossi testified that the actual introduction of him to Mr. Flynn and Mr. Flynn's associate in Florida was carried out by an individual by the name of John DeSalvio who Mr. Rossi testified he had known years earlier in the Bronx and who had subsequently moved down to Florida.

But I do not think there is any substantiation in the trial record to substantiate the allegation in the pre-sentence report that Mr. Capotorto did make the introduction.

In addition to that, the pre-sentence report states that Mr. Capotorto has been involved in the narcotics traffic for some years.

I want to point out that Mr. Capotorto has one prior conflict with the authorities -- in this case Federal authorities -- involving narcotics. That culminated in a trial in December, 1974, on a charge of conspiracy to distribute cocaine, on which Mr. Capotorto was acquitted, and although Mr. Capotorto does have an arrest record totaling some 37-odd arrests, including traffic violations, dismissals, reversals on appeal and whatnot, there are no other narcotics charges of any kind that have ever been leveled against Mr. Capotorto.

B6 I think one of the most important things on sentencing is to frame the Court's judgment so that the judgement not only fits the crime charged, the crime for which the individual has been convicted, but more that it fits the individual defendant.

I think one of the key points in this trial, in showing exactly what activity Mr. Capotorto was

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engaged in, was the conversation had with the agent, Festa, of the Customs Bureau, and Mr. Camperlingo, which was in May of 1974, at a time when Mr. Camperlingo had no reason to believe that he was dealing with a Federal agent. He stated, in affect, that the dealings with Albert Rossi involved marijuana.

I think in view of the record, and of course your Honor is fully familiar with the record in this case, that it would indicate that in fact that the activities of James Capotorto in this particular case did confine themselves primarily, if indeed not exclusively, to the areas of marijuana -- certainly it had nothing to do with heroin as charged in this case; but certainly it is not contended by anybody that he was a source of cocaine. The best that can be said in connection with his activities insofar as it involves narcotics, was his trip to New York. The only other activity was the two-kilogram transaction involving cocaine, involving four co-defendants who are before your Honor for sentence.

Your Honor received a pre-sentence report, and really there is little I can contribute to it.

James Capotorto was born in Cleveland some 32 years ago. He was adopted, and he first learned about his adoption at the age of 13 through a family fight.

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He suffered -- he suffered as a result of learning of his adoption at a young age, and he suffered throughout his life as a result of his size, frankly -- your Honor can see he is a substantial individual, to put it mildly.

The record of arrests against him in the past have dealt with traffic infractions, breaking and entering -- he was found on somebody's lawn.

There is a charge in the record that he was once convicted of procuring. I understand that the charge was ultimately appealed and the appeal was successful in the State Courts of Florida, and of course that conviction was expunged.

He has two convictions: One is a felony conviction for possession and uttering of some counterfeit money -- two twenty-dollar bills for which he pled guilty and received five years in prison, and that there is also a charge on which he was adjudicated as a youth involving interstate transportation of two stolen tires -- in that case, as I understand it, it involved two stolen tires taken across state lines, and Mr. Capotorto at that time was committed under 5010(d) of the Youth Corrections Act.

In this case, as in almost every case, the Court is basically powerless to undo what has been done in the past. What happened over the last 32 years of

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James Capotorto's life is something that comes before this Court now, but is not something which this Court can change. The Court can only deal with the present, and its judgment with the future.

Mr. Capotorto is not married. He was; he is divorced, but he does have his parents, and they are both elderly people -- a father, 81 years old, and a mother, 69, who suffers from a heart condition for which she was confined in Holy Cross Hospital in Florida.

They, between the two of them, presently draw something less than $300 a month between union pension benefits, Social Security benefits and whatnot.

The home which they own was provided for and is being maintained by their son who is presently before the Court for judgment.

Your Honor, in many ways in a sentence the Court sentences people who are not before him. It sentences people who were never before him. The sentence imposed on James Capotorto, in many ways, in almost every way will affect those two people, and it will certainly affect Mrs. Capotorto, as it states in the pre-sentence report, that her present tensions and her anxieties from her heart trouble come from a concern that a mother has for her son.

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Needless to day, the same tensions and anxieties, of course, will be transmitted to the father.

I have spoken to Mr. Baraban who represented Mr. Capotorto in Florida on several occasions, and he told me he has been to the Capotorto home, that he has seen these people. They seem to be a close, well-knit family with concern for their son.

I would ask your Honor, in view of the facts and circumstances in this case, with which the Court is B7 fully familiar, that if the Court sees fit to impose a sentence of incarceration, that the Court impose such a sentence which would incarcerate him under Title 18, 4208(a)(2) so that at least Mr. Capotorto will have the opportunity of presenting his case to the Parole Board as soon as possible, and the full Board can take whatever action it deems advisable upon whatever institutional adjustments that it may deem necessary.

In addition, your Honor, you fined the co-defendants in this case. I would ask your Honor, in view of the fact that Mr. Capotorto's money and assets are such, and are really the main stem and main support of his aged parents, neither of whom is in a position to work, and there being only one other child, a married daughter with a family of her own, that your Honor in this case not impose a committed

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fine upon the defendant Capotorto.

Your Honor, I cannot in my limited experience substitute my judgment for that of the Court, but I think your Honor has heard the case, has had the pre-sentence report before him, and is aware of the facts surrounding this defendant.

I think your Honor would be well within the guidelines that have long since been set forth in this Ciruit in sentencing Mr. Capotorto in the manner in which I have just described.

THE COURT: Mr. Reilly?

MR. REILLY: The Government has nothing to add, your Honor.

THE COURT: Mr. Capotorto, do you have anything to say?

DEFENDANT CAPOTORTO: No, your Honor.

THE COURT: The sentence on Capotorto is five years and $5,000 committed fine. It is automatic -- I did not mention it with Mr. Thompson but I might as well obviously do that, according to the law, because it is an automatic 3-year special probation term at the conclusion of your confinement.

All right, gentlemen, now let us deal with the other problems.

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DEFENDANT THOMPSON: Your Honor, may I ask one question?

THE COURT: Yes.

DEFENDANT THOMPSON: I understand I go to jail for five years?

THE COURT: Yes.

DEFENDANT THOMPSON: And I will do about 40 months--in other words, do I get 5 plus 3?

THE COURT: For conviction under this statute, if you are confined to prison for any length of time, when you come out the law requires that there be a 3-year special probation. That is automatic. That is something that I have nothing to do with.

All right, who else wants to speak first?

MR. REILLY: The Government's application is that all of the defendants be remanded.

THE COURT: Aren't all these matters on appeal?

MR. REILLY: Yes, they are, your Honor. Pending appeal the Government moves that they be remanded for sentence.

THE COURT: I am not going to do that. They have -- well, I am not going to do it. Let me put it this way, I am not going to do it on the Government's statement that they ought to be remanded. It appears to me that an

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appeal is pending, and if the bond, which I think we worked out the other day, is intact, there are no other reasons that the Government has for its acquiescence in the bond beforehand, it would appear to me that these men have a right, as anyone else, if they pay for their bail, that they have a right to stay free until the matter is concluded.

In any event, I will hear from you.

I suppose, in view of my statement --

MR. KATZ: Well, I was going to echo your sentiments.

THE COURT: I think I should hear Mr. Reilly first and you answer it later.

MR. REILLY: Your Honor, the controlling feature is not that the defendants will be available for other proceedings or final surrender. The controlling feature here, which is provided by the statute, is that there is a danger to the community.

The magnitute of this case is overwhelming. It is not a one-ounce sale to an undercover agent, which in itself is serious, which is severely punished by law. This is a transaction involving multiple kilograms of cocaine and marijuana over a long period of time. You have heard all that.

THE COURT: The only evidence they were convicted

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of, so far as I recall the testimony, on these four men, were two kilos of cocaine.

MR. REILLY: Two kilograms of cocaine.

THE COURT: That is all. I recall that there was a transaction on marijuana involved in the whole business but, Mr. Reilly, they weren't convicted on that.

MR. REILLY: They weren't convicted on that.

THE COURT: What they were convicted of, and that is what I think I am required to consider, is selling -- buying and dealing in two kilograms of cocaine.

MR. REILLY: But your Honor should also consider the compelling evidence that they dealt in large scale amounts of marijuana -- some multiple hundreds of pounds which, I recall, was transported from Florida to New York, and that was during the conspiracy period, but after that, in May of 1974 I believe it was, we had the Festa tape which showed this type of conduct was continuing on beyond that.

THE COURT: Well, what I would suggest to the Government is that they prosecute them for that.

MR. REILLY: Your Honor, the standard that I am arguing for is that it would appear, of course, that the Government may prosecute for continuing violations, but it seems that the violations will continue whether there is a prosecution or not.

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The records of these defendants -- just adverting to Mr. Thompson's record, for example, is such to indicate a continuing pattern, whether there is an appeal pending or not. There is a suggestion very strongly that this criminal conduct will continue, and the interests of justice dictate that in these cases these defendants be remanded. This is one of those cases which I think merits it -- the evidence certainly is more than sufficient to convict these defendants.

The questions on appeal are not such as to make any remanding of these defendants an exercise or an abuse of discretion.

For that reason we press our application.

MR. KATZ: Your Honor, I do not believe that the Government has even come close to making a persuasive argument that any of these defendants should be remanded. The issues are substantial, and they will be presented on appeal. There is nothing in their background at present which would suggest that any of these four men, if permitted to go back to their families, would engage in such activities.

THE COURT: Well, my feeling about that, in any event, is that if they engage in unlawful activities and they go back to Florida, let the law enforcement authorities do what they think is necessary.

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As I understand it, the Government has said nothing about the bond. The bond apparently is that which was stated. I think there is an interest in society that they get equal treatment, and I see no reason to have these men, on the basis of what the Government said, to have these men denied what is available to most other persons who have been convicted of crimes. If they can put up the bail, the bail will be continued.

MR. KATZ: Thank you, your Honor.

MR. BARABAN: Thank you, your Honor.

(The following took place at 12:00 o'clock noon)

THE CLERK: United States of America against Ernest Coralluzzo for sentence.

Is the Government ready?

MR. REILLY: The Government is ready.

THE CLERK: Is the defendant ready?

MR. RICHMAN: Defendant is ready.

If the Court please, Mr. Coralluzzo -- .

THE COURT: You may sit down, Mr. Coralluzzo. This may take some time.

Yes, Mr. Richman.

MR. RICHMAN: If the Court please, Mr. Coralluzzo's attorney is Irving Anolik. Mr. Anolik is actually engaged in trial at the present time. I understand he has a jury

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PRE-CHARGE CONFERENCE

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(In the juryroom.)

THE COURT: All right, gentlemen. We are all here? What do you want to discuss first, the order and time of summation? You want to discuss that first?

MR. M. RICHMAN: We have that worked out, Judge.

THE COURT: Tell me what it is.

MR. M. RICHMAN: I am writing it out for you.

THE COURT: All right.

(Discussion off the record.)

THE COURT: Mr. Frankel, I will take your requests first.

MR. FRANKEL: Mine are the same as Mr. Kossman's.

THE COURT: Are they duplicates?

MR. FRANKEL: More or less.

MR. M. RICHMAN: Your Honor, may I be excused? I didn't submit a request to charge. I will allow one of the other attorneys to cover me.

THE COURT: All right. On Request No. 1 -- that is about an accomplice's testimony being suspect -- I am going to give a full charge on that. So the substance of Request No. 1 is granted.

MR. FRANKEL: Thank you, sir.

THE COURT: Request No. 2, I am going to indicate that association, relationships, more knowledge, is not

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enough, and will detail what is sufficient to constitute membership in a conspiracy. So the substance of No. 2 is granted.

No. 3, of course.

MR. LEFCOURT: What is No. 3, your Honor?

THE COURT: Self-interest of a witness.

No. 4, yes.

MR. LEFCOURT: Your Honor, what is that?

THE COURT: Prior inconsistent statements.

No. 5 is a part of my charge on reasonable doubt.

MR. FRANKEL: Granted to the extent that your Honor charges.

THE COURT: Right.

No. 6 is granted up to "existed." The rest of the sentence is denied. As I understand the law, once they are satisfied that a conspiracy existed there are no holds barred in terms of what they can consider. They may use hearsay statements and so forth to determine membership.

No. 7, yes. That is separate consideration of each defendant.

8, the presumption of innocence, yes.

Burden of proof, No. 9, yes.

No. 10, yes. That is the indictment is not evidence.

No. 11, the elements of the crime of conspiracy, that he entered into and understood its aims and purposes, yes.

Each of you has raised something about specific intent. I am going to charge that in a conspiracy they have to find that the defendants, whoever they are considering, did the act knowingly and understood the unlawful purposes of the conspiracy and attempted to make it succeed and had specific intent to do those acts, but beyond that I am not going to go. That's No. 12.

13, equality, equal justice, yes.

MR. FRANKEL: No. 14 is just that I join in all the other requests.

THE COURT: All right. No. 15.

MR. FRANKEL: That is one of Mr. Kossman's.

THE COURT: 15. mere association and so forth, I suppose the answer to 15 is I am going to grant it in substance. I am going to indicate, as I indicated earlier, mere association is not sufficient, knowing somebody is not enough. I think I am going to be required to indicate that mere familial relationships are not sufficient in view of Mrs. Coralluzzo's marital relationship and Mr. Joseph Lepore's relationship, but I am probably not going to go much beyond that in terms of indicating what is not

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MR. LEFCOURT: I don't know whether the Court has adopted a specific charge on that.

THE COURT: I am dealing with Mr. Frankel. I will reach you.

MR. LEFCOURT: I thought we were together.

THE COURT: I am dealing with Mr. Frankel's requests.

A number of you have been raising questions about a single act, and I am not aware of any of the proof that indicates that there was a single act done by anyone.

MR. VICTOR: Your Honor, in Crea's case there was almost an act. That is the act that was never consummated, the act that was quashed, it was not even a single act.

THE COURT: He guaranteed one time, and then there were two -- I would regard it as two acts, as I recall the evidence. According to the evidence, which he has refuted, he guaranteed it at one time. Then they met again and he made a guarantee of $50,000 and he couldn't get it up. They reduced it to twenty and it was quashed. That wasn't a single act.

MR. GOLDBERGER: I don't think it is a single act. It is a single transaction rule.

If all the government proves is one isolated,

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haphazard transaction, then they haven't proved membership in a broader conspiracy.

Unless, as I understand that, unless that single transaction was sufficient to show knowledge of the conspiracy, and it seems to me that that act about the guarantee is sufficient for that. $50,000 of cocaine is sufficient to show the existence.

I will give that single act if anybody can show me that it is appropriate. I can't see on the evidence in this case it being appropriate to anybody.

MR. KATZ: Receiving the attache case and Mrs. Coralluzzo taking that attache case to her mother's home is the only act.

THE COURT: There is also evidence she is supposed to have taken money from Angley out to him while he was in New Jersey, isn't that part of the evidence?

MR. KATZ: That's right. It seems to me that was never hooked up to any conspiracy or any conspiratorial purpose.

THE COURT: The evidence is it was from the sale of cocaine.

MR. KOSSMAN: The Court has said there are several acts in the proof, but the jury may only find one act and, therefore, that rule of law comes into play.

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sufficient. I am going to indicate what is sufficient.

MR. FRANKEL: In 15 I indicate that they had to do something to aid the conspiracy.

THE COURT: I agree with that.

What is the overt act --

MR. FRANKEL: It must be an act which is committed to accomplish the object of the conspiracy.

THE COURT: Is he charged with an overt act?

MR. FRANKEL: No, he is not.

THE COURT: I don't believe I am going to make a charge like that.

MR. FRANKEL: He is only charged with conspiracy.

THE COURT: Well --

MR. FRANKEL: One overt act, yes, sir, but that overt act must be in furtherance of the conspiracy is what I say.

THE COURT: No, I am not going to charge that.

The single as opposed to multiple conspiracies I will charge, that is, that they have to find it was a single conspiracy. If they find there was more than one conspiracy they will have to throw the case out.

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THE COURT: I don't believe so.

MR. STOKAMER: With respect to my client, my client is alleged to have committed one act. They can easily reject the hearsay testimony.

THE COURT: But they can't reject the hearsay testimony. I have to reject it.

MR. STOKAMER: They don't have to believe it.

THE COURT: They don't have to believe it, obviously.

MR. STOKAMER: My client is only charged with having been in one act.

THE COURT: The one act he is charged with, assuming they credit it, is an act of taking some cocaine and buying it.

MR. VICTOR: Is it possible you can just charge the single transaction rule and leave it to the jury to determine whether anybody participated in a single transaction without naming anybody?

THE COURT: I don't believe that that's the law. I believe it has to be isolated and to be of such a nature unless they can glean from that single transaction that the person didn't know of the conspiracy. It seems to me all this does in this case is to confuse the point.

In any event, my disposition is to deny it.

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MR. FRANKEL: While we are still on my points, your Honor, my position is that my man is alleged to have attempted to commit a single transaction by talking to agents out somewhere in Long Island. That is the whole thing. That is why I am requesting this charge here. It is an attempt to commit a transaction.

THE COURT: No, I don't think so.

I am going to Mr. Kossman.

MR. FRANKEL: I have some more, Judge.

THE COURT: You have some more?

MR. FRANKEL: Yes. I don't know whether you got them. They are in Mr. Kossman's.

THE COURT: I will come back to that. I will deal with them as they come in here.

Mr. Kossman's No. 1, in substance.

No. 2 in substance.

No. 3, 4 -- I understand from my law clerk that the first 14 are identical with Mr. Frankel's.

MR. KOSSMAN: Yes. Same rulings?

THE COURT: Same rulings.

15, yes.

16, this is something like association, I suppose, and I suppose I can say about 16 that in substance I will grant that.

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17, we are on the same question about a simple transaction, and I am not going to give that.

18, knowledge of the existence and the aims and purposes of the conspiracy, yes.

19, I am going to give a charge about a single as opposed to multiple conspiracy. That is as far as I am going to go.

20, I don't recall that as being pertinent because I don't regard any of these transactions as being isolated.

21, if more than one conspiracy, granted.

22, denied.

23, denied.

24 is that the alleged overall conspiracy terminated when Rossi became a fugitive. As I understood the evidence, Rossiwas still dealing with some of these people, at least at one point from December to some other time.

When was it he was in jail and couldn't get out?

MR. EPSTEIN: January 25, 1974.

THE COURT: That is the end of the conspiracy.

MR. LAVIN: I think the lawis the arrest of one conspirator doesn't terminate the conspiracy. It is the arrest of the core group.

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THE COURT: We don't have testimony of anything happening after January 25 except Bertolotti and Camperlingo, and that evidence only applies to them. I don't think we have any other evidence of after January 25th.

MR. LAVIN: I don't think so.

THE COURT: Of any acts that can be attributed to anybody other than that agent down there, Festa, and they are talking. So whatever they said down there I have already instructed the jury has no relationship to these other people.

So that No. 25 is denied except that if there is any desire for me to use the point of January, 1974, as being the termination date, I will do that.

MR. A. WEINSTEIN: I would ask for that since that conversation in Miami involved one of my clients.

THE COURT: All right. No. 26, as to independent evidence that he had knowledge of the continuance of the conspiracy, that is not the law. I will say he has to have, for them to find he participated in it, they have to find that he had knowledge.

MR. ROSSMAN: How about my 28, 29 and 30?

THE COURT: They are way down the list.

None of you have made a request about missing witnesses, and I gather that I am going to be required to

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make a charge on that because I have to suspect much is going to be made of that in the summation.

My feeling, one, in regard to Menarone and in regard -- one of you made a statement about supporting the testimony, need for corroboration. As I understand the law, there is no need for corroboration under the Federal law, so that the government was not required to bring any witnesses for corroboration other than Rossi and if much is made of missing witnesses, I am going to make the charge that the witnesses are equally available to both sides, not that the government was required to call them. I don't think that is the case.

I suppose what that means, Mr. Lefcourt, is that supplemental charge is denied.

MR. LEFCOURT: I don't intend to make much of it. In that case, I would ask there be no missing witness charge. I am not going to bury myself. How could I argue a missing witness?

THE COURT: If the missing witness syndrome is not going to be argued, there is no basis for me to make the charge. But I get the impression that a number of you plan to say that the government should have called these various people, and I don't think that's a fair statement of what their obligation is.

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MR. LEFCOURT: As to my supplemental request as to missing witnesses, I was referring only to one witness, because I haven't heard anything in the course of the trial that there was any other witness that the government hasn't called that was cooperating with any law-enforcement agency that is other than anything but a normal citizen who is presumably available to both sides notwithstanding whatever privileges or immunities they were going to assert.

As to Mengrone, your Honor, we have a concession he was cooperating with Westchester County law-enforcement officials and we have testimony by Greeley that Westchester was cooperating with the Federal Government.

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THE COURT: There is no point going over it again. I think the government said he refused to cooperate with them.

MR. LEFCOURT: In that case I will not talk about missing witnesses on my summation and would ask the court not to charge anything along those lines.

THE COURT: All right. There would be no basis for me to charge it if nothing is made of it in the summations.

MR. GOLDBERGER: I don't mean to interrupt your Honor, but missing witnesses only in regard -- the government has the burden of proof in a criminal case not in the sense that although they may be equally available to both sides. The government has the burden of carrying the day.

THE COURT: The government has the burden of proof, but --

MR. GOLDBERGER: It is based on evidence or lack of evidence.

THE COURT: If it feels it has reached that burden, as it can, with one witness -- in this case with Rossi and so forth -- although there has been corroboration of others, I don't think there can be any charge they were under some obligation which this missing

thing seems to imply.

MR. PANZER: In attacking Rossi as a witness, I don't see how defense counsel can avoid saying over and over again it is just his word.

THE COURT: That is a different thing. I have to charge that an accomplice under federal law is sufficient.

MR. PANZER: I don't want to get into the problem of your Honor charging missing witnesses if I say the only testimony you have as to my client is Mr. Rossi.

THE COURT: That is fair. However, there have been several indications for me to charge that the government should have called some person they didn't call and therefore you are to imply that if he were called he would be adverse.

Mr.Katz, charge No. 1, I am going to marshal it in some form, but whether I am going to do it as you have indicated, I don't know. I am going to try to state what I believe the facts show and what your contentions are.

MR. A. WEINSTEIN: On marshaling the evidence, may we turn in those requests on the marshaling of the evidence on Monday morning as we see

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it?

THE COURT: Turn them in tomorrow. You are not giving me very much time. I have to work on this thing over the weekend.

MR. A.WEINSTEIN: Let me apologize in advance for it being handwritten.

THE COURT: If I can read your writing.

MR. VICTOR: With regard to the marshaling of the evidence on Steve Crea, I have submitted a written motion on the Rule 29 motion to acquit and I have made reference to the facts therein, including the cross examination. I would ask your Honor to use that as a guideline.

MR. LEFCOURT: I for the record object to the court marshaling the evidence.

THE COURT: You have already objected.

The second paragraph about mere association I have already indicated I am going to charge.

The single conspiracy, which is No. 2, I am going to charge.

I may charge mere presence. I am not sure.

MR. KNOX: There is quite a bit of authority on the mere-presence rule.

THE COURT: I understand that.

MR. PANZER: I also think it is applicable to my client very strongly, and I would therefore request the charge.

THE COURT: I will give that some thought.

MR. KATZ: I want to add, your Honor, the mere-presense doctrine is especially applicable to Anita Coralluzzo because if Ernest Coralluzzo is in court, she is in by virtue of living in the same abode.

THE COURT: No. 4 is redundant in part. If I grant No. 3, it will cover 4.

MR. KATZ: I think mere presence and guilty knowledge are two different rules.

THE COURT: I am not going to charge it twice. If I charge mere presence, you have it twice.

MR. KATZ: Coupled with guilty knowledge. There are cases that hold specifically that.

THE COURT: I am not going to do that. I may charge mere presence. I probably won't go further than that because I am going to indicate what is necessary for them to be a participant in this conspiracy, and I think that's sufficient.

No. 5 is the same in terms of what isn't

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sufficient.

No. 6 in substance.

No. 7 I am going to probably cover in my -- I don't know whether I will use the language. So the best I can tell you is I will grant it in substance.

MR. KATZ: That comes from a direct sales case, not a narcotics conspiracy case.

THE COURT: I don't know where it comes from, Mr. Katz. I am not going to use that language.

No. 8,I am going to make that in terms of the general charge I have already told you. I will indicate mere association, marital relationships, and so forth, is not sufficient.

I am not going to go into the details that you have asked for in No. 9 on page 4.

As I read 9 on page 5, it seems to me to be a duplication of what we have already gone over.

No. 10, again I am not going to take and isolate the specific facts because I don't think I am going to have time for that. I am going to allege as a contention, in all probability, what your contentions are in regard to Mrs. Coralluzzo as opposed to what the government's contentions are, but that's going to be in the marshaling of the evidence rather than in

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relation to my specific charge.

Accomplice's testimony, I am going to do that.

How they are to weigh a witness, which is No. 12, evaluate the testimony, I am going to do that.

Self-interest and so forth and so on, how to discredit a witness' testimony by his manner and so forth and so on, I will charge that.

MR. KATZ: I beg your pardon?

THE COURT: How the jury should evaluate and weigh a witness' testimony, I will make a charge on that.

MR. KATZ: Even though it wasn't specifically requested, I assume the court will give a full and rather elaborate instruction with respect to circumstantial evidence and not pile inference on inference.

THE COURT: I am going to give a full charge on circumstantial evidence and it is going to be my kind of charge, but it will be what circumstantial evidence is.

MR. KATZ: Should I submit an additional request?

THE COURT: I don't think you have to. Obviously after I charge you will have a new oppor-

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tunity.

This is Mr. Kossman's supplemental 28, 29 and 30. They are all denied.

Now Mr. Epstein and Mr. Stokamer. I have already gone into the testimony of accomplices, which is No. 1, and I will grant that in substance.

The single as opposed to the multiple conspiracy, I am going to make that charge.

MR. STOKAMER: No. 2 is denied, is that correct?

MR. EPSTEIN: In other words, we are not requesting an all-or-nothing charge; we are requesting a more selective charge set forth in Bynum.

THE COURT: I am going to charge if they find more than one conspiracy, as the government contends, then they have to dismiss.

No. 3 is granted in substance as to membership.

No. 4, proof of participation, that's denied. If they find a conspiracy I am required to find membership by independent evidence, not the jury.

No. 5, granted in substance as to the object of a conspiracy.

I am going to give a general charge as to

mere association and so forth -- that is No. 6 -- being insufficient, that there has to be something more than that.

No. 7 is denied.

No. 8 is denied.

MR. STOKAMER: Your Honor, we have two additional requests. By a snafu it was not typed up. It will be typed up in the morning unless your Honor prefers we give you a handwritten copy.

THE COURT: I will see if I can read it.

MR. STOKAMER: Thank you.

THE COURT: Now Mr. Lefcourt.

I am going to give a full charge on accomplice and the fact that they have to scrutinize it with care and they have to see if they have a motive and so on.

Interested witnesses, I am going to do that in a general charge on the credibility of witnesses. I will do that.

I don't believe corroboration is necessary.

MR. LEFCOURT: It doesn't request that the court instruct the jury that they must find corroboration. It only relates to the question of accomplice testimony and how it is referred to the cases I have

cited indicate, that corroboration is preferred, but it says specifically that you can still convict without it.

THE COURT: Denied.

MR. LEFCOURT: Which one is the court on?

THE COURT: I am on No. 4. What is the prior consistent statement?

MR. LEFCOURT: Which one am I talking about?

THE COURT: Special Agent Lough?

MR. LEFCOURT: Yes. On cross examination of Rossi on behalf of defendant Guerra there was a handwritten statement by Special Agent Lough reporting a conversation that he had with Rossi to the effect that Rossi brought two kilograms of cocaine to Florida. That is inconsistent with his trial testimony that Mr. Guerra sent it down by way of James Lump Lump Lombardo.

THE COURT: All right. I am going to make a general charge on inconsistent statements, but I am not going to go into any detail in regard to each specific act. That is going to be for you to do in summation.

The criminal record, and so forth, of witnesses I am going to charge, and whether he has a motive,

anything to gain, or has a grudge against defendants, but bad acts and so forth --

MR. LEFCOURT: To show character.

THE COURT: I am not going to charge that.

MR. LEFCOURT: Will the court tell the jury that counsel's questions into that area are not simple mud slinging, as the charge requests, that the lawyers have the burden, the duty, however the court wants to phrase it? I have phrased it here that the law permits attorneys who are cross examining --

THE COURT: No.

MR. LEFCOURT: That is the purpose of it, your Honor, what the request goes to, to consider their testimony and what is credible. After all, prior bad acts and criminal record is not for the purpose of showing bias, it is to show the character of a witness. The character of every witness is in issue every time --.

THE COURT: I indicate that is what they can weigh, but I am not going to make any charge like that.

On No. 6, I don't have any basis for this, I don't believe.

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MR. LEFCOURT: If I haven't given you basis to believe that those conversations --

THE COURT: You have talked a lot. I will consider as a possibility making this one of Guerra's contentions.

MR. LEFCOURT: May the courtlet me know the answer to that before I sum up.

THE COURT: I will have to do that.

MR. LEFCOURT: Your Honor, I have one fruther request which I haven't put in writing. It has come up because defendants have testified.

I know the court has already instructed the jurv about the failure to testifv, that thev can't use that. I would like to comment specifically to the jury during my summations as to whv I did not put my client on the stand, vet I would like to preserve the rule that the prosecution need not comment on the failure of mv client to take the stand.

I do that because, your Honor, we have a case here where, although the court has charged the jury, the fact that some defendants have testified has clearly, no matter what the court charges, placed the jury in a position of saving, "Whv didn't he testifv, why didn't he tell us that these wiretaps were a lie?"

I think in a multi-defendant case one of the problems is when some testify and some don't. I would request that the court allow me to comment on my client's failure to take the stand, yet to maintain the rule that the prosecution cannot.

MR. LAVIN: Your Honor --

MR. LEFCOURT: Judge Dooling has granted that. It is a discretionary thing. I don't think there is much law on that.

MR. LAVIN: He wants to have Mr. Guerra testify out of his mouth in summation and I am to be estopped from even commenting on the fact that Guerra did not testify.

MR. LEFCOURT: Not testify; just explain.

MR. LAVIN: He wants to explain why his defendant did not take the stand and I can't say anything.

MR. GOLDBERGER: Along those lines, I recently tried a case before Judge Cannella in this courthouse and my client did not take the stand and I told the jury, as I plan to in this case, that whether my client takes the witness stand or not is a decision that I make, without making any comment other than that.

MR. LAVIN: That is a little different.

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THE COURT: That creates no problem, because obviously it is your decision. It may not be your decision, but you can represent it to be your decision.

That doesn't put the government in the position I think you put them in.

MR. LEFCOURT: I don't intend to go much beyond that. I really haven't formulated what I would like to say, but in light of the wiretaps, the fact that I am going to argue that he was puffing on the wiretaps, you know, puts me in a difficult position to put him on the stand. Other than that, I don't intend to testify through my summation for my client.

THE COURT: I think what you better do is after you formulate what you think you are going to say you better give me some idea what it is and I will let you know.

MR. LEFCOURT: All right.

THE COUNT: Mr. Levenson, I will deal with your requests.

No. 1 I have already indicated I think yes.

MR. LEVENSON: There is some duplication, your Honor.

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THE COURT: No. 2, yes.

No. 3, I have already indicated yes.

No. 4, yes.

No. 5, as I understand the law, the jury can find her to be a conspirator by any acts prior to the time she joined, but once she joined I think she is responsible for what goes on, they could find her responsible. So I think No. 5 seems to me to be too broad.

MR. LEVENSON: I don't think it is relevant anyway.

THE COURT: No. 6, in substance, yes.

No. 7 we have already gone over.

No. 8 --

MR. LEVENSON: Those would just be standard charges.

THE COURT: All right.

Mr. Michael Weinstein.

No. 1, about an indictment, yes.

No. 2, the presumption of innocence, yes, and reasonable doubt, yes.

No. 3 is denied. That is the rule in Mr. Alan Weinstein's circuit, but not in this one.

No. 4, we have gone over about informer and

scrutiny and all that sort of stuff.

No. 5, we have already gone over that, how they can discredit a witness. I am going to deal with that, and No. 6.

On the conspiracy, which is No. 7, in substance, it parallels at least most of what I am going to say about it.

No. 8, the substance of that is granted.

No. 9, in substance.

No. 10 is denied.

No. 11 is denied.

No. 12, in substance.

No. 13 is granted.

14 is general. I will say something about that.

No. 15, I am going to have a charge about intent, so I suppose it would come under that.

No. 16 is granted for the time being. I may have to change that as the day wears on.

MR. KOSSMAN: Your Honor, there is only one thought I want to give your Honor. I had intended to argue to the jury that this indictment -- and I am absolutely sure of it, and I say absolutely sure because I have had four other lawyers look at it -- this

indictment charges a specific violation only of cocaine and not marijuana. I have to face the facts and I was going to argue to the jury that they could find him guilty of the marijuana, because he admitted it, but not of the cocaine. Would your Honor preclude me from arguing that?

THE COURT: I think we talked about that earlier. I accepted the government's contention that the indictment was not only one which charged a violation in terms of cocaine, but heroin and marijuana.

MR. KOSSMAN: It says 841(b) --

THE COURT: We had that argued earlier. That is what Mr. Lavin's contention was. Mr. Lavin's contention was that it involved heroin, marijuana and cocaine.

What is your contention now, Mr. Lavin.

MR. KOSSMAN: This point only involves my client.

MR. LAVIN: Your Honor, we submitted a memo on this and what we said in the memo --

THE COURT: You were charging a violation on all of them.

MR. LAVIN: We said both, marijuana is a Schedule I controlled substance, which it is, of course,

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and marijuana transactions are probative of the narcotics conspiracy.

MR. KOSSMAN: But the indictment says narcotic drug and the Act specifically says that marijuana is not a narcotic drug. That is the point. The penalty, of course, is five years. It is not that I get a free pardon as a result of that in that sense.

You can't charge a man with one crime and convict him of another. The indictment says narcotic drug and marijuana is not a narcotic drug.

The jury may say our fellow is guilty of marijuana -- obviously he has confessed to that person, the statement to the agent -- but he is not guilty of cocaine.

THE COURT: My understanding is that the government was contending that all of those transactions, even the so-called transaction with Mr. Cimmino, which involved heroin, and the transactions in cocaine and the transaction in marijuana, were subsumed under this indictment. That is what I understood the government's contention to be.

MR. LAVIN: My only problem with that now is, as Mr. Kossman pointed out, the penalties. I just have a problem with that.

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If the jury really convicted Mr. Camperlingo of dealing in marijuana and acquitted him in their own minds of dealing in cocaine --

MR. KOSSMAN: How could they say it in their verdict?

MR. LAVIN: That is what I am saying. Really the penalty that they are asking to impose is the penalty under the statute, which is not their concern, which is five years, but instead --

THE COURT: I don't see how --

MR. LAVIN: Your Honor, maybe we could have a request to charge, if Mr. Kossman is agreeable, and everybody else, that marijuana is admissible as proof of the narcotics conspiracy and not -- I suppose the bottom line is if you find they only engaged in marijuana --

MR. KOSSMAN: If.

MR. LAVIN: If.

MR. KOSSMAN: They may find him --

MR. STOKAMER: Your Honor, that was one of my supplemental requests. I think what applies to Mr. Kossman also applies to Mr. Bivens.

THE COURT: If you are going to say that your indictment is charging trafficking in cocaine --

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are you including heroin?

MR. LAVIN: Yes.

THE COURT: -- then that is what the indictment is. If the proof is only as to marijuana, then it seems to me that they have to acquit.

MR. KOSSMAN: That's correct.

THE COURT: Under this indictment, under a conspiracy to traffic in cocaine and heroin, if they find him trafficking in marijuana my feeling is going to be that they have to acquit, particularly in a single conspiracy.

MR. LEFCOURT: Most respectfully, your Honor, that stuff came in under the general conspiracy. What the prosecution seems to be saying at this point is that it is probative of another issue. We are in a great deal of trouble at this moment, because the court did not instruct the jury as coming in under some other theory.

MR. KATZ: Mr. Lavin has changed positions. I think the court probed Mr. Lavin a great deal and Mr. Lavin insisted that it was coming in under the substantive theory that this was part of one conspiracy.

Now he is changing ground after the case is concluded and saying that came in as being probative

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of defendant's propensity to deal in drugs. He is shifting ground.

THE COURT: Quite frankly, if he concedes that there be a charge that if they find anybody just dealt with marijuana they must acquit, I don't see how there can be any harm, although I agree with you that I thought I had probed this and asked about it and I thought I understood I was advised by Mr. Lavin that it included all of them, marijuana, heroin and cocaine.

MR. KATZ: That's right.

MR. LAVIN: That's correct.

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MR. PANZER: Your Honor, there is an additional problem with that. If you get into that area I think your Honor is going to charge the jury if you find an individual defendant is a member of the conspiracy then you can consider all acts by co-conspirators as binding on that individual defendant.

Now, if the marijuana transactions are no part of this conspiracy, we are going to need an additional instruction that they are in no way to consider those acts involving the marijuana binding on the individual defendants that were not a party to them.

THE COURT: I think, Mr. Lavin, that you better --

MR. PANZER: I think that is only fair.

THE COURT: You better give the matter some thought, because if you are now changing your ground from what I understood, I think we may be in some difficulty. I don't know how we are going to extricate ourselves from it.

MR. KATZ: Your Honor, on behalf of my client I would renew the motion at this time for a mistrial precisely because all of that highly prejudicial testimony did come in involving marijuana transactions.

THE COURT: I don't regard any marijuana transaction as being prejudicial.

hp2

MR. KATZ: They were talking about tons of marijuana.

MR. EPSTEIN: I objected at that time.

THE COURT: I know you objected. I don't regard any tons of marijuana as being prejudicial in terms of the present climate of opinion in this country. I don't regard that as being prejudicial.

But that is another point. The fact of the matter is in some circles people regard it as not respectable unless you do smoke marijuana.

Are you and Mr. Reilly prepared to answer that?

MR. LAVIN: Yes. Not right now. In the morning.

THE COURT: It may create a problem because of the fact that people are going to argue tomorrow. Mr. Kossman, for example, is one of those who may reached tomorrow. He is No. 3 up. Mr. Goldberger has no problem, Mr. Levenson has no problem, but Mr. Kossman does. He is No. 3.

MR. STOKAMER: I am No. 4, your Honor, and I have the same problem.

THE COURT: No. 3 comes before No. 4.

MR. KOSSMAN: I hope so, your Honor.

THE COURT: Mr. Kossman has to know this and I would think he has to know before he prepares his argument.

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hp3

MR. KOSSMAN: I will put it this way: with all respect to the prosecutors, who are extremely fair in thinking about it, I am willing to go No. 6 or on Monday and give them more time to think about it.

MR. PANZER: I will let you go 5, I will go 3, if that will help you.

THE COURT: Mr. Panzer is ready to go No. 3.

MR. KOSSMAN: I feel certain of this.

THE COURT: Mr. Frankel, will you be ready to go No. 4 tomorrow?

MR. FRANKEL: I will try. Mine is not going to be too long. I will try to accommodate everybody. I am No. 6. Your Honor is taking two out ahead of me?

THE COURT: Mr. Kossman and Mr. Stokamer have the problem with the marijuana. Mr. Epstein doesn't have that problem. Nobody else has that problem.

You are a marijuana person?

MR. LEFCOURT: Yes.

THE COURT: I thought you were strictly cocaine.

MR. LEFCOURT: Oh, no, your Honor.

THE COURT: And a little heroin too, I thought, and some mannite.

MR. LEFCOURT: No, no. I am absolved from that conspiracy.

hp4

MR. FRANKEL: I will concede that 6 goes after 4 and 5.

MR. PANZER: I will go 3, your Honor.

THE COURT: All right. That will give Mr. Kossman and Mr. Stokamer some time.

MR. STOKAMER: Does that make me No. 6, your Honor?

THE COURT: That will make you No. 6, which means that you probably will come at the end of the day.

I would think that you and Mr. Reilly better settle that.

MR. LEFCOURT: Your Honor, I haven't given Mr. Lavin or Mr. Reilly any four-fold warning under Miranda, but I think what has happened here, your Honor, is that there has been a concession that there is more than one conspiracy. The Court did not instruct the jury with respect to the marijuana transactions that they were probative of some other issue or admissible on some other issue.

THE COURT: I certainly didn't.

MR. LEFCOURT: I don't think there is any choice, your Honor, at this point but to grant a mistrial. I don't understand how we can deal with it. How do we deal with it when the prosecutor says, "I really meant it for something else but it came in under the conspiracy theory"?

THE COURT: I am inclined to agree with that.

hp5

We will see how it's resolved.

MR. M. WEINSTEIN: Your Honor, just in conclusion, on my requests to charge, there has been some terminology by Mr. Lavin as to a core group and he has at times put certain people into that group and at times left certain people out of it.

There is no evidence here as to an organized core group other than Mr. Rossi and Mr. Coralluzzo and with regard to the marshalling of the evidence and with regard to the charge relative to that evidence, I would ask the Court to refrain from the terminology "core group," because although that might be Mr. Lavin's theory, in fact there is no evidence as to an organized core group.

THE COURT: All right. Mr. Weinstein, you are wasting my time. I am not adopting Mr. Lavin's terminology.

MR. M. WEINSTEIN: Thank you.

THE COURT: All right. Mr. William Richman.

Request No. 1, I am going to make a charge about presumption of innocence. So to that extent your request is granted.

I am going to make a charge on reasonable doubt, but that is going to be my charge. I don't believe it's going to be consistent with what you ask in Request No. 2.

MR. W. RICHMAN: As long as I get presumption of

hp6

innocence, reasonable doubt and burden of proof I am quite satisfied.

THE COURT: No. 3 I grant in substance.

4, granted in substance.

5, granted in substance.

6, in substance.

7, I have the same feeling about that isolated transaction as we had earlier and I just don't think the proof sustained any isolated transaction. I will give it some thought.

MR. W. RICHMAN: I would appreciate it. I can put down "will give it some thought"?

THE COURT: Yes, but I think I am going to deny it.

8 is denied.

9 is granted in substance.

10 is denied.

11 is granted in substance.

12, in substance.

Again. Request No. 13 is similar about association. I am going to have a charge on that.

No. 14 is denied.

No. 15 is granted in substance.

No. 16 is granted in substance.

hp7

No. 17 is granted in substance.

No. 18 is denied.

No. 19, in substance, granted.

No. 20, in substance.

No. 21. I am going to charge about bias and prejudice and that they can consider that, but the rest of it I am going to deny.

MR. W. RICHMAN: As long as we get part of that in. I think that's the crux of my whole case.

THE COURT: 22 is granted in substance.

23 is denied.

24 comes under reasonable doubt. I am going to make a charge on that.

No. 25 is granted in substance.

You don't need No. 26 because your man testified, Mr. Richman.

MR. W. RICHMAN: That's true.

THE COURT: Your man has testified.

MR. W.RICHMAN: Before Judge Metzner my man didn't testify in the Cuban conspiracy.

THE COURT: I am going to indicate when the prsumption of innocence has been removed in terms of reasonable doubt, but I don't think that 'moral certainty" is a term that will come into my charge.

hp8

No. 28 is granted in substance.

29, we are back to the isolated transaction. That is denied.

No. 30 is denied.

No. 31 is the isolated transaction and we discussed that.

No. 32 is granted.

Now Mr. Goldberger.

MR. GOLDBERGER: I think we can cut some of it short, Judge. I would like rulings on 1.

THE COURT: Yes.

MR. GOLDBERGER: You will charge that?

THE COURT: Yes.

MR. GOLDBERGER: Skip over, your Honor, to 4 and 5.

THE COURT: Yes. 4, on reasonable doubt, yes.

MR. GOLDBERGER: You won't charge 5, is that correct?

THE COURT: Yes. "Moral certainty" I am not going to use. That term is confusing. I will say they have to be satisfied beyond a reasonable doubt and I will make the charge.

MR. VICTOR: May we comment on moral certainty in our summation?

hp9

THE COURT: You may not charge to the jury what the law is because I will pull you up short.

MR. GOLDBERGER: Skip over to No. 10, Judge. I think we can get through with this pretty quickly. I don't believe you will charge that. Is that correct, you are denying that?

THE COURT: That's right.

MR. GOLDBERGER: Denied?

THE COURT: Denied.

MR. GOLDBERGER: Skip over, your Honor, to 21. You are going to charge the all or nothing on single versus multiple?

THE COURT: Right.

MR. GOLDBERGER: 23 and 25, your Honor. I am a little concerned about 23.

THE COURT: 23?

MR. GOLDBERGER: We had that to-do with Mrs. Rossi's testimony yesterday, Judge, and I thought --

THE COURT: I thought I was very mild.

MR. GOLDBERGER: You may have thought you were very mild, Judge, but I think --

MR. A. WEINSTEIN: I didn't think so, after the jury left.

MR. GOLDBERGER: The jury tends to think --

hp10

THE COURT: When the jury went out, of course, I showed my true feelings.

MR. GOLDBERGER: A jury tends to believe that a judge is completely impartial and I thought you were a little rough on us with Mrs. Rossi.

THE COURT: All right.

MR. GOLDBERGER: 25, your Honor.

THE COURT: 25 is denied. That again is Mr. Alan Weinstein's circuit's rule, not the rule of your circuit, Mr. Goldberger.

MR. GOLDBERGER: 27, Judge, deals with the failure of the defendant to testify. You will give that charge?

THE COURT: Yes.

MR.GOLDBERGER: 28, your Honor, dealing with the compromise verdict by a jury.

THE COURT: I am going to give that charge at the beginning.

MR. GOLDBERGER: Single transaction you will not charge?

THE COURT: No.

MR. GOLDBERGER: I withdraw 30 because it doesn't make any sense to me.

THE COURT: All right.

hp11

MR. GOLDBERGER: Thank you, your Honor.

MR. VICTOR: 37 is an addendum to mine, your Honor.

THE COURT: I am going to make a charge on that. Everybody is leaving and they won't have any idea what I am going to do with the government's.

Now I will deal with you, Mr. Alan Weinstein.

No. 1, in substance.

No. 2, I will charge reasonable doubt in substance.

MR. A. WEINSTEIN: You are leaving out the "moral certainty" as you said?

THE COURT: There may be some other phrase, but I will make what I regard as an adequate charge.

MR. A. WEINSTEIN: All right.

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THE COURT: No. 3 is denied.

No. 4 I have already indicated that I am going to give.

MR. A. WEINSTEIN: Is your Honor going to charge it is going to have to be considered with greater care?

THE COURT: Probably not. I will tell them what they have to consider. I am not going to make any charge about drug addict. There is no evidence this man was an addict. That is No. 5.

No. 6 is repetitious. I am going to make a charge about accomplices. I am going to make a charge about how they review the evidence of a witness.

No. 8, how they may be discredited with a prior conviction.

About what's necessary for participation in No. 9.

No. 10 I am going to grant in substance.

No. 11, there will be a part of my charge about that.

Substance of 12.

No. 13 is denied.

No. 14 in substance is granted.

15, yes, interest, in substance.

16. I am going to include in 16 about more

qwp2

association, and so forth, not being sufficient and martial and familial relationships, but I don't know whether I will go further than that. I am going to indicate what is necessary affirmatively to be a participant. I may indicate mere presence is not sufficient.

As to 18, intent in general I will charge.

The burden of proof on the government in general.

MR. A. WEINSTEIN: Your Honor, actually 19 is not a burden ofproof charge. It is a multiple conspiracy charge.

THE COURT: You already know I am going to do that. There is no point wasting time on that. I have indicated that several times already.

No. 20, denied.

21, granted in substance.

I am going to have a charge about the fact a person does take the stand and I am going to make a charge on how they should consider the evidence of a defendant who doesn't.

Separate personal consideration, yes, 23.

24, yes.

25, I have already gone over that.

No. 26 is denied except that again I am going to charge the all or nothing in terms of the single as opposed

gwp3

to multiple.

No. 27 is denied.

MR. A. WEINSTEIN: Your Honor, on 28. I have not asked for any of them except on 28. 28. I don't know how we are going to resolve it because I don't know what position Mr. Lavin is going to take, but if he takes the position that it is part of the conspiracy, then because there is a separate penalty I specifically request the lesser -- I am sorry -- the special interrogatory so we can have the penalty question worked out.

THE COURT: It is denied.

MR. A. WEINSTEIN: Your Honor, while I am here, may I just get some procedural matters cleared up on the charges? Those you have denied it is understood we have objected to. Is it also understood for the record that we join in all requests on the other counsel's charges?

THE COURT: Yes, of course.

MR. A. WEINSTEIN: Are we allowed to argue in our closing argument, your Honor -- I haven't been before you so I don't know -- what you are going to charge the jury? We are not allowed to argue that?

THE COURT: You are to summarize the evidence. You are not to make any comment upon what I am instructing the jury some whatever.

wp4

MR. VICTOR: Even as a point of reference?

THE COURT: Not even as a point of reference. You must argue evidence as you see it. It is my province to instruct the jury on the law, not for you to interpret what I am going to tell them.

MR. KOSSMAN: Don't limit me to evidence. I must talk psychology.

THE COURT: But not the law.

Mr. Victor. I don't know how to deal with No. 1. The first sentence is all right. I think the substance of the second is all right. He is not bound until he becomes a member.

No. 2, I guess the substance of that, except I doubt that I will charge that. I don't see how it helps at all.

MR. VICTOR: It is important to me to know how your Honor will charge in that regard.

THE COURT: Once he becomes a member of the conspiracy as I understand it, if they find he became a member the last day of the conspiracy, he may be charged for acts that have gone before.

MR. VICTOR: His own acts before?

THE COURT: The acts of the conspirators before.

wp5

MR. VICTOR: I am talking about his own acts. He is charged in the indictment with having committed these acts in November of '73. The evidence doesn't bear that out. I am saying he should not be charged with anything he did -- I am not talking about the others -- anything he did before November of '73.

THE COURT: I am not going to charge that. I can't be that specific. I am going to indicate it will be necessary for them to find he is a member of the conspiracy. That's as far as I can go.

No. 3 in substance.

No. 4 in substance.

No. 5 is denied.

No. 6 is denied.

No. 7 is denied.

No. 8 is denied.

No. 9 is granted in substance.

No. 10 is denied.

11 is denied.

12 is denied. I may make a charge on 13 about reasonable doubt. I am not going to use that language.

No. 14 granted in substance. No. 15, what does that have to do with it? Is that Mr. Lenore's statements you have reference to?

wp6

MR. VICTOR: That is one of them. There were also statements of Camperlingo, Bertolotti.

THE COURT: That is to be considered by them. I don't know whether I will make another charge about it. As the matter came up, I made a specific charge. I don't know whether I will have to say that again at this time.

No. 16, okay.

No. 17, in substance.

No. 18 is all right.

I am going to talk about more presence, more association, so forth, in 19, so that is granted in substance.

The substance of 20.

21 is denied.

22 is denied.

23. I am going to have a charge on reasonable doubt.

24 is denied.

MR. VICTOR: 24, your Honor?

THE COURT: And 25 is denied.

No. 26 --

MR. VICTOR: Your Honor, if I may get back to 24 for a moment.

THE COURT: 24 is denied.

wp7

26, I am going to make a charge they have to make a decision for themselves. I am not going to have anything in your language.

The burden is on the prosecution, no moral certainty, but the burden is on the prosecution will be charged.

Again, I don't understand why you have 28. Your client took the witness stand.

MR. VICTOR: Your Honor, I gave you a supplemental one, 37. At the time I submitted these I hadn't made a choice.

THE COURT: Then we don't have to consider 28.

No. 29 is denied because I am making a single as opposed to multiple.

The informer business is redundant. I already said that.

No. 31, I will say about how to assess the evidence.

32, I am going to tell them how to assess the credibility of witnesses. 33, if any of you makes a comment about missing witnesses, I am going to make a charge that the witnesses are available to both sides. If nobody makes any comment, then I won't make any charge on that at all. I think it is fair for the government if anybody

wp8

brings that in for me to make that charge.

A good reputation I will charge.

I am not going to put any special emphasis on government agents and police officers.

Now the government. I suppose I should have done that first.

MR. A. WEINSTEIN: Is your Honor going to send the indictment to the jury if they don't ask for it?

THE COURT: I am not going to send it to them if they don't ask for it.

MR. A. WEINSTEIN: If it goes to the jury, will the aliases be excised?

THE COURT: No. I am not going to demand that be done. If Mr. Lavin wants it, it is up to him.

Government Request No. 1 is granted. Request No. 2 is granted in substance.

Burden of proof is granted.

No. 3 --

MR. A. WEINSTEIN: In substance, your Honor, or is this the way you are going to give it?

THE COURT: In substance. No. 4 in substance. I am going to set forth the statute.

No. 5, you left out Lenore. Do you want him in?

MR. LAVIN: Yes.

THE COURT: So the first paragraph is going to be granted.

Insofar as the rest of that is concerned, I am not going to charge in those terms it is an actual violation, but I am going to charge the enterprise doesn't have to succeed in order for them to find a conspiracy existed.

MR. VICTOR: Your Honor, what number?

THE COURT: The end of 4. First paragraph.

Is it 4 or 5? 5. I am sorry.

The first two photographs of 5 are granted and the rest of that is in substance granted except the term that they are shown to have violated the narcotics law. I am not going to use that term.

Request No. 6, the elements of the offense, granted again always in substance.

No. 7 about aiding and abetting. Where do you charge Mr. Cimmino?

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MR. VICTOR: Your Honor, in No. 7 and the others where they lump the names together, are you going to grant it in that language?

THE COURT: In substance, yes.

MR. VICTOR: It makes it appear, the way they are lumped together, they are each charged in all of the counts. That is not so. For instance, the way it is worded in 7, accordingly you may find the defendants Joseph DeLuca, Steve Crea and Joseph Lepore guilty of the offenses charged in counts 2, 3, 4 and 5 respectively, it sounds like they are in each count, and that is not so.

THE COURT: I think we are going to make that clear.

In any event, what about Cimmino? Do you want him included?

MR. LAVIN: I think it is cleared up in the second paragraph on page 2 of charge No. 7.

THE COURT: That's cleared up where?

MR. LAVIN: The second paragraph of 7, on the second line of that.

THE COURT: That's the point. The point is are you charging Cimmino or are you not with being an aiding and abettor?

MR. LAVIN: With actual distribution.

THE COURT: So you don't want him charged as being aiding and abetting as you do the others.

MR. LAVIN: No.

MR. VICTOR: I would presume, as I see you going along and saying okay, you will somehow limit the repetition of the same group of names constantly.

THE COURT: The charge is going to be dealt with and I will do it as efficiently as I can in that regard. I will grant it in substance.

No. 8 is granted in substance.

No. 9 is granted in substance.

No. 10 in substance.

No. 11 in substance.

No. 12 in substance.

13 in substance.

14 except for the fact that I think that the testimony doesn't show any facts in some conspiracy after January, 1974.

MR. LAVIN: By any of the conspirators, no.

THE COURT: So I suppose we ought to limit to that time instead of the time of the filing of the indictment.

MR. LAVIN: I don't see it is prejudicial at all even if we bring it up to June.

THE COURT: Maybe. I will think about it.

MR. A. WEINSTEIN: It may be prejudicial as to Mr. Thompson and Mr. Camperlingo where they brought in a May, 1974 statement.

THE COURT: But the May, 1974 statement I gave a special charge to the jury about how to consider that. It was only to be considered in respect to them. The only part I really felt was pertinent was the statements that they made about their dealings with Rossi as to constitute their membership in the conspiracy.

Anyway, I will solve the problem.

MR. FRANKEL: You are charging that in substance, No. 13?

THE COURT: No. 14.

What is the purpose of No. 15? I know that is a correct statement of the law, but I don't see how it is pertinent in this trial. I don't think it has any relevance to this trial.

MR. LAVIN: In case of a person like Mr. Crea, for example, there is no proof of any involvement of him after the time -- after December, I suppose,

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and there is no proof he withdrew from the conspiracy.

THE COURT: There is no testimony about anything belonging or withdrawing. I don't see why we need this.

MR. LAVIN: The jury might be confused because the jury might say a person is involved in certain transactions and that is all as far as his participation in the conspiracy is concerned. I think they should be instructed and should know that because a person is perhaps involved in three or four transactions in June or July or August, his participation doesn't terminate because there is no testimony about him after that.

THE COURT: You have a single conspiracy matter and I am going to make a charge in regard to that. I will give it some thought but I don't see where that has any support in the evidence at all, where there is any need for it.

I agree with you it is a correct statement of the law, but I don't see where it is needed in this case.

16 in substance.

17 in substance.

18, 19, 20, 21 in substance.

22 I am going to grant if there is any comment

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made by anyone about your failure to call anybody.

I am going to give the substance of this charge in No. 23.

Good character, yes.

25, yes, possible punishment.

26 is denied.

27 is granted.

MR. VICTOR: Your Honor, I would like to know, if it is at all possible, what your practice is, if there is a conviction, with regard to granting bail pending appeal or whether there will be a remand, just so our clients can prepare their families and whatever have you.

THE COURT: In that instance, in general I am going to be -- I will tell you quite frankly, if there are convictions in this case I would think, in view of what I feel to be -- no basis in fact, but feel to be the character of some of the people involved, if they are found guilty there will be a disposition, a heavy disposition, on their part to flee. I would seriously consider a government application for sizable bail. I will. I don't know whether the government is going to do that. I would suspect they would. I would very seriously consider that. I

don't know what the government is going to do. That is too far down the line.

MR. VICTOR: With reference to a man like Steve Crea who has substantial roots in the family, family, kids, et cetera, would you consider bail pending appeal in case there is a conviction?

THE COURT: I think I have to consider bail. I can't remand somebody with bail. The issue isn't about bail. The issue will be the size of it. I think everybody is entitled to bail. The question is going to be the size of the bail. I don't think I can say you have to be remanded to jail, you can't get any bail. I can't do that.

MR. VICTOR: In terms of substance, I don't know what your Honor feels may be substantial.

THE COURT: I don't have any idea because I don't know and it is too far down the line. What I will indicate to is I would suspect that the government, if any of these people are convicted, will want sizable bail for them in terms of their freedom in order to assure their appearance, and I would be favorably disposed to consider any reasonable, sizable figure for enlarged bail.

MR. LAVIT: Your Honor, have you given

any thought to sequestering the jury after you charge them?

THE COURT: I really hadn't, but I may. There has been something in the back of my mind for quite some time. It all depends. I really would like to get to the jury early and give them a full day and maybe I won't have to face that problem.

MR. A. WEINSTEIN: I certainly would have no objections, your Honor, if the court is predisposed to that on behalf of my client. In fact, I would go along with that. It might be wise.

THE COURT: Most of the defendants would. My problem, I am frank with you, it is in the back of my mind, but it is difficult for me to know how to tell the jury that they are going to be sequestered. I have to advise them prior to the time. I can't have them come in and tell them they have to stay. That would come as a shock. Yet if I tell them early, it seems to me that it may take on the appearance of coercion. I have to resolve that in some way.

In view of what I understand has happened to Mr. Rossi's parents, I am very much concerned about the deliberations of the jurors, but I do think that I would -- I just don't know what to do. I will have

to talk to several people about it. Maybe I can come up with a solution by the time we are faced with that problem around Tuesday.

(Adjourned to January 24, 1975, at 10:00 a.m.)

GOVERNMENT'S PROFFER OF PROOF ON CONSPIRACY

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court.

MR. LEFCOURT: Your Honor, I would ask the court to have the United States attorney define with some particularity the conspiracy alleged in count 1 of this indictment. Your Honor, I am at a loss to understand how every conceivable act that has ever been alleged to have been made by any defendant on trial here is part of but one single conspiracy. We don't have from the United States attorney any definition of the conspiracy charged other than to say that it is a conspiracy to possess and distribute narcotics which he defines as anything that comes within the definitions of heroin, marijuana and cocaine.

THE COURT: I told you I think, Mr. Lefcourt, in the beginning, it was on a slightly different problem but you indicated -- it seems to me that if there are several or if there is a variance in what's been proved from what's in the indictment, the time to raise those questions and resolve them intelligently is at the close of the government's case.

MR. LEFCOURT: Your Honor, what I am specifically concerned about now is the witness who is presently testifying is going to testify to acts concerning my client, at least from the notes I received on 3500

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material, to acts concerning my client that occurred, I guess, prior to the Flynn episode to which he has been testifying now. And specifically, your Honor, I would move to preclude the introduction of such testimony unless the United States attorney can define specifically for the court how in the world anything prior to that, whatever acts he is going to testify to, could possibly become part of the conspiracy charge in count 1 of the indictment.

THE COURT: I can't deal with that now without taking up a great deal of time. At the moment all I have heard this man testify about are acts involving his trip to Florida and subsequent trips. Are you saying the government is going to bring out something prior to that?

MR. LEFCOURT: That is what appears to be from the 3500 material.

MR. LAVIN: As Mr. Bossi testified --

MR. REILLY: Your Honor, the witness will testify about events before the trip to Florida, and after the trip to Florida because the conspiracy is not limited to the trip to Florida.

MR. LEFCOURT: What is the conspiracy? That's what I am trying to find out. What is their

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definition of this conspiracy. Anything that any defendant is alleged to have done during the year 1973? Is that it? Aren't we to know what we are in effect charged with?

MR. LAVIN: The witness, Mr. Rossi, has identified every single individual in this courtroom or sitting here as a member, as a person he has dealt with in narcotics, and he has identified Mr. Guerra as well as Mr. Pearson.

MR. W. RICHMAN: That is a false statement, your Honor.

THE COURT: Oh, come, Mr. Richman, there is no jury here.

MR. W. RICHMAN: I appreciate that.

THE COURT: Come, come.

MR. LAVIN: Now Mr. Lefcourt wants some nice, cut out scenario where somebody -- there is no such thing.

MR. LEFCOURT: All I want is a little due process to know what the conspiracy charge is.

THE COURT: Well, the problem he is raising is what are the parameters of the conpsiracy.

MR. LAVIN: The parameters are the time from January 1,1973 until --

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THE COURT: Any narcotics transaction these people dealt with?

MR. LAVIN: If they dealt with people involved here, yes.

THE COURT: Any narcotics transaction, any people he dealt with from January 1st until --

MR. LAVIN: The testimony will be limited to witnesses testifying of their association with each other and with the defendants on trial in narcotics transactions. And Mr. Guerra's case: Mr. Rossi testified as to buying narcotics from Mr. Guerra in early 1973 and as to selling him narcotics when he came back from Florida. Mr. Pearson is going to testify about buying and selling narcotics from Mr. Guerra.

MR. LEFCOURT: What conspiracy is he talking about?

MR. LAVIN: Mr. Lefcourt is trying to confuse the issue by asking a question that has not answer: what conspiracy are we talking about.

THE COURT: If it has no answer --

MR. LAVIN: Well, it has --

THE COURT: It has to have an answer or else we shouldn't be here.

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MR. LAVIN: It has no answer in the sense that anyone can sit down and by a word description define what this conpsiracy is. I mean, the testimony of the witness, even from Rossi, it was made clear that this is a single conspiracy involving Mr. Rossi buying and selling narcotics from the individuals on trial.

THE COURT: So that the parameters you have are any of the transactions in terms of narcotics in which Mr. Rossi was involved with any of these individuals from 1973 to the filing of the indictment, in narcotics, including cocaine, heroin and marijuana, is part of the conspiracy, is that right?

MR. LAVIN: Yes, sir. Your Honor, I could give you an example of a recent case --

THE COURT: I am not asking you for an example of a recent case. I may need that but not now. I am trying to find out to help Mr. Lefcourt precisely what it is he seems to be concerned with in regard to the matter. I am trying to find out exactly what his client is charged with. I think he is entitled to know that.

MR. LEFCOURT: Your Honor, I have never heard of a conspiracy that can't be defined.

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THE COURT: I am trying to get an answer for you, Mr. Lefcourt.

MR. LEFCOURT: Thank you.

THE COURT: Have you defined it correctly? Any narcotics transaction involving Mr. Rossi or Mr. Coralluzzo, or is it Mr. Rossi and Mr. Coralluzzo?

MR. LAVIN: Mr. Rossi and Mr. Coralluzzo.

THE COURT: In dealing with these individuals from the year 1973 to the date of the indictment, roughly from January, 1973 to the date of the filing of this indictment, which is what, August, '74?

MR. A. WEINSTEIN: June, '74, your Honor.

THE COURT: That's the answer.

MR. LEFCOURT: Your Honor, I quite frankly have never heard of a conspiracy in those terms. I mean, if he was going to say that the conspiracy is an agreement to go down to Florida to steal narcotics and then to come back and sell them and distribute them, that's one thing.

THE COURT: But --

MR. LEFCOURT: He doesn't say that. He goes much further. It has to do with anything during a period of time.

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THE COURT: He says a conspiracy is, I guess, an underlying agreement to deal with Mr. Coralluzzo and Mr. Rossi in the sale and distribution of narcotics during the period in question.

MR. LEFCOURT: If that's the definition, I move to preclude testimony by Mr. Pearson that he had any dealings with Mr. Guerra because if it is not Mr. Coralluzzo and it is not Mr. Rossi it can't be part of the conspiracy, if that's the definition.

THE COURT: Mr. Pearson's testimony was that he was getting these narcotics from Mr. -- up to now he had got the narcotics from Mr. Rosen and made the deal with Mr. Rossi to sell to --

MR. LEFCOURT: Your Honor, I will amend my motion to exclude any dealings with Mr. Guerra not having to do with Franklin Flynn or the cocaine received from Florida brought to New York. In other words, any dealings with Mr. Pearson that has nothing to do with Ernest Coralluzzo and Rossi and the Flynn transaction which he testified to.

THE COURT: I will have to wait until I see what comes out in the testimony. Then you can specify, because it seems to me the way it's been defined, either Mr. Rossi or Mr. Coralluzzo must have

some connection with it, if this man is a middleman, whoever else is involved.

MR. LAVIN: Your Honor, we put Mr. Guerra, as he belongs, in this as a supplier of narcotics to various of these members and at the same time buying narcotics from them. Mr. Guerra is at the top right now.

THE COURT: I think that the defendants are entitled at this point in the trial for the government to be in a position to give them a theory of the case.

MR. LAVIN: Mr. Lefcourt wants to exclude the testimony of this witness because he puts his client in. It's as simple as that.

MR. LEFCOURT: Because it is totally prejudicial.

MR. LAVIN: Of course it's prejudicial.

MR. LEFCOURT: You haven't charged him in a specific category.

MR. LAVIN: Nonsense.

THE COURT: He has a right to have him exluded if it is not connected with what the charge is.

MR. LAVIN: He doesn't have the right to have him excluded. This man will testify he dealt

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in narcotics with this man --

THE COURT: He said he had a right, and I am running this court, not you. I am making these rulings, not you.

MR. LAVIN: I am arguing the government's case, your Honor.

THE COURT: I have indicated that he does have a right to have it excluded if the testimony is out of the conspiracy that's being alleged here and I would assume that you would agree with that. The issue is not abstractly whether it is going to be excluded but whether it is within the parameters of the conspiracy.

MR. LAVIN: If this was a transaction that took place in 1971 between Mr. Guerra and Mr. Pearson I would agree with your Honor. It took place within the term of the conspiracy. The man dealt with Rossi, Ccralluzzo and with Mr. Guerra.

THE COURT: You have indicated that the conspiracy you are charging is dealing with Rossi and Corralluzzo and has some connection with these people in connection with narcotics.

MR. LAVIN: By my own -- I have to sit here and really define the conspiracy.

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Might I, please? Thank you.

MR. LEFCOURT: I have no objection to him doing that, your Honor.

THE COURT: The point is, gentlemen, we aren't going to gain anything by all these outbursts. I raised the question and we are trying to pursue it. If you want to pursue it let's pursue it like rational people.

Is that the end of that?

MR. LAVIN: I assume so, your Honor.

THE COURT: I think that the only thing I can suggest you do, Mr. Lefcourt, is when the evidence is brought in, then you raise it, and if you have an objection I will have to deal with that at that time.

MR. LEFCOURT: Your Honor, I only ask one thing. The reason I have raised it now, we are in a trial and if it is brought in and the jury is somehow later told to disregard it --

THE COURT: Well, if you see it come in, you can raise an objection and then if I think it has sufficient merit, it looks to me like it is outside, I will ask Mr. Lavin to indicate to me at the side what he proposes to do with the evidence.

MR. LEFCOURT: Excuse me, your Honor.

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One question directed to Mr. Lavin is -- we can find out right now -- is any dealings between the witness Pearson and defendant Guerra ones in which Mr. Pearson is alleged to have been a middle person between Mr. Rossi and Mr. Coralluzzo? If the answer to that is yes and his definition of conspiracy is Coralluzzo and Rossi, then I have to sit down because that's his definition. If the answer to that is no, then the court can exclude that right at this time and we will know.

THE COURT: Why don't you think about that, Mr. Lavin. You can give an answer to it tomorrow. It does appear to me there is some merit to Mr. Lefcourt's statement or else you will have to agree to define the conspiracy.

The only other pending matter that I know of is this business of the psychiatrist.

MR. LEFCOURT: Excuse me, your Honor. Can we have an answer to that tomorrow morning before testimony so we don't have to have it after?

MR. LAVIN: I don't really want to raise my voice to Mr. Lefcourt. Mr. Reilly and I are presenting the government's case and I am not about to sit down here and lay out the testimony of the witness

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for Mr. Lefcourt --

THE COURT: You don't have to do that. You are not required to do that, but, as I said, it appears to me that they are entitled to know what conspiracy they have been charged with and you and/or Mr. Reilly should be in a position to define it.

MR. LAVIN: They have the 3500 material of Mr. Pearson. They know basically what he is going to testify to.

THE COURT: I am going to abide by whatever definition of the conspiracy that you indicate that you are alleging and that's going to be the conspiracy the government tries here.

All right, I think we have gone as far as we can.

The only pending matter I know of is the business of the psychiatrist. I gather that it is Mr. Katz' thesis that the possibility that this man was examined by -- Mr. Rossi -- there is a possibility that he could be called as a witness to give some relevant testimony. I have some doubts about it, but, in any event, I think --

MR.KATZ: Yes.

THE COURT: And he is relying on a case

SOUTHERN DISTRICT COURT REPORTERS U.S. COURTHOUSE
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UNITED STATES OF AMERICA

vs.

ERNEST CORALLUZZO

New York, January 15, 1975,

10:05 a.m.

Trial resumed.

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(In open court; jury not present.)

THE COURT: Mr. Lavin, I begin where we left off yesterday. I have given the matter some thought. You seem to take the view, at least as far as I can understand you, that the government is being put upon in being required to indicate what this conspiracy is and its contours.

The action is brought as one conspiracy, not a series, and I assume -- and if I can't get a definition I am going to make my own definition of what the conspiracy is -- I assume that the conspiracy involves Rossi and Coralluzzo in dealings one way or another in transactions in cocaine with these individuals.

There are 17 people on trial here. We have had about one week of testimony. I think Miss

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Sherman has been mentioned, as I recall, once, Mr. Vasta once. There is nothing but hearsay testimony so far even connecting Mr. Bivens with it. I'm talking about this out of my head, so I may be slightly inaccurate, but not very much, I am sure.

MR. LAVIN: Mr. Rossi testified he met Mr. Bivens and had discussions.

THE COURT: He met Mr. Bivens, but that doesn't make him guilty of a conspiracy.

MR. LAVIN: He testified further that he and Mr. Bivens negotiated a sale for a quarter kilogram of cocaine.

THE COURT: That means he talked about it. He also testified he never sold him any cocaine directly, and whatever he hears about the cocaine, as I now understand the testimony, comes from the lips of someone else. I gather that you are going to make some connection.

But it does seem to me that if that is the conspiracy we are talking about, that these people ought to know about it. At the present time I am not going to allow you to talk about any transactions as proof of the conspiracy -- it can't get in on that theory -- of any of these people who were dealing in

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narcotics independent of any transactions in which Coralluzzo and Rossi were involved, that is, if that is what I understand your definition is. I don't believe you can say this is a conspiracy in every transaction in 1973, January, 1973 to June 1974, that these people engage in, and then say of course that is part of the conspiracy.

So I think that Mr. Lefcourt, who raised the question, and I gather everybody else is entitled to, is entitled to know precisely what the government defines as the conspiracy in this case.

MR. LAVIN: Your Honor, first of all, when I mentioned yesterday that I didn't think I had to define the conspiracy I meant I didn't think I had to go beyond what was charged in the indictment.

THE COURT: All right.

MR. LAVIN: Secondly, it is the government's position that Mr. Coralluzzo, Mr. Rossi, Mr. Pearson, Mr. DeLuca, Mr. Lepore, all the defendants, including the witnesses and the defendants mentioned, formed a core group of people who dealt in narcotics, and early in 1973 Mr. Guerra acted as the supplier of narcotics to that group and he bought narcotics from Pearson. Mr. Flynn also supplied narcotics, unintentionally, it

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seems, at one point, to that group.

THE COURT: Who comprises the group, the core group?

MR. LAVIN: Mr. Rossi, Mr. Pearson, Mr. DeLuca, Mr. Browning, Charles Guida and Mr. Angley.

THE COURT: Mr. Coralluzzo?

MR. LAVIN: Mr. Coralluzao.

The government's argument is that Mrs. Greco acted as a stash, let her place be used as a stash.

THE COURT: I am not asking you to define it all. All I am trying to find out is what you are describing as the conspiracy.

You are now describing as the conspiracy that there was a group, Rossi, Coralluzzo, Pearson, Flynn, Browning, Angley and DeLuca, that this was the core group, and that these people, the defendants dealt with them in various kinds of narcotics transactions, either buying it or selling it or hiding it or something like that. Is that what you are talking about?

MR. LAVIN: Yes, sir, and Mr. Guerra supplied cocaine, the testimony from Mr. Rossi and the testimony from Mr. Pearson, supplied cocaine to the group. Mr. Flynn also supplied cocaine.

When they got this cocaine this core group,

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through Mr. Angley, through Mr. Guida, through Mr. DeLuca, through Mr. LePore, sold it, and they sold it to these other individuals on trial.

MR. W. RICHMAN: Pardon me. I don't mean to interrupt. Can he refer to Louis Lepore, your Honor, for the record?

MR. LAVIN: Joseph and Louis.

THE COURT: All right.

MR. LAVIN: They sold the narcotics to Mr. Camperlingo, Mr. Thompson, Mr. Bertolotti, there were negotiations with Mr. Vasta, there were sales to Mr. Arnold, there were sales by this core group through the other people who acted on their behalf to Mr. Serrano, there were attempts to sell to Mr. Lucas, to Mr. Crea, to Mr. Guerra, who at one point was the supplier and then after Florida became a purchaser of narcotics from these same people, to Mr. Rubin, to Mr. Cosme.

THE COURT: All right.

MR. LAVIN: That essentially is the conspiracy charged in the indictment, and the government submits that the indictment is really a very short period of time, January, '73 to June of '74, and most of the testimony will end about May of 1974, and these people bought narcotics from each other and sold narcotics to

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each other, and they all were aware, which is very unusual in a conspiracy of this size, that practically everybody in this case knew of the existence of the conspiracy, knew the other people involved in the conspiracy, and knew the purposes and scope and aims of the conspiracy.

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THE COURT: All right, fine. I think that is the first time that at least the core group, who they are, and what is involved has been described. It seems to me that the defendants now know what the charge is, which I think was not too clear. I had assumed it was that the core group was more limited than the one that you indicated.

MR. LAVIN: Definitely Mr. Coralluzzo and Mr. Rossi acted as the bosses of this core group. The people acted on their behalf, but essentially that was the core group, who worked for them and got paid by them, were dealing in narcotics with other people.

THE COURT: All right. I have the answer and I am not going to hear any argument about it. If that is the government's theory, then that is the government's theory of the case. At least you know what the theory is, and that is what you are entitled to.

What about the second question pending which Mr. Katz raised.

MR. LAVIN: I am sorry. The psychiatrist?

THE COURT: Yes.

MR. LAVIN: Your Honor, we have somebody working on that right now.

MR. LEFCOURT: Your Honor, I don't mean to argue

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MOTION FOR EVIDENTIARY HEARING RE

APPELLANT GUERRA

FESTA-CAMPERLINGO CONVERSATION

GARY PEARSON'S LETTER

HANDWRITTEN REPORT OF SPECIAL AGENT LOUGH

DATED APRIL 18, 1974

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

-against-

LOUIS GUERRA,

Defendant

----------x

MOTION FOR EVIDENTIARY HEARING

CR5/75

SIRS:

PLEASE TAKE NOTICE that upon the annexed Affidavit of Gerald B Lefcourt, dated the 18th day of February, 1975, and upon all papers and proceedings heretofore had herein, the undersigned counsel for the Defendant Guerra will move this Court at Part ___ thereof, at the Courthouse located at Foley Square, New York, New York on the 18 day of February, 1975, at 10:00 a.m. or as soon thereafter as counsel can be heard, for an Order pursuant to Rule 29, 33 and 34, granting the defendant a new trial and arresting judgment heretofore entered on the grounds of prosecutorial misconduct and for an evidentiary hearing to determine the existence of new evidence and for such other and further relief as to this Court may seem just and proper.

Dated: New York, New York
February 18, 1975

Yours, etc.

Gerald B Lefcourt
Attorney for Def. Guerra
299 Broadway
New York, New York 10007
212 349-7755

TO: James Lavin, Esq.
Asst. United States Attorney
Foley Square
New York, New York 10007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

LOUIS GUERRA,

Defendant.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GERALD B. LEFCOURT, being duly sworn, deposes and says:

I am the attorney for the defendant Louis Guerra and make this Affidavit in support of his application for a new trial.

Defendant Guerra was originally charged in two counts by Indictment CR5/75 which was tried to a jury before the Hon. Robert Carter after which the defendant was convicted of Count I, conspiracy to possess and distribute various controlled substances, and was acquitted on Count IV, which was substantive, charging possession with intent to distribute.

During the course of the trial, approximately 56 wiretapped conversations were played to the jury over the course of two days. Prior to the introduction of the wiretapped conversations into evidence, your affiant on behalf of the defendant Louis Guerra, moved to have them excluded inter alia on the grounds that the wiretapped conversations were being offered for the truth of the statements made therein, but were in reality part of a "rip off" in which the defendant Guerra and others

pretended to be drug dealers to induce Peter Mengrone and Frank Lucas to give money for which they would receive nothing. Indeed, it was conceded by the prosecution that no drugs were ever delivered and the chief prosecution witness, Albert Rossi Jr., testified that it was a fraud to obtain money. From the record of the trial, and the wiretapped conversations themselves, it can be seen clearly that not only was the defendant Guerra correct that these wiretapped conversations were part of a fraud and not in furtherance of any narcotic conspiracy or transaction, but further that the prosecution knew or should have known these facts. Because these wiretapped conversations were submitted to the jury, substantial prejudice to defendant Guerra obviously occurred at trial.

As the court is well aware, the bulk of the wiretaps concerned conversations between defendant Guerra and one, Peter Mengrone. Only one other defendant at trial was overheard on the wiretap, that being James Capatorto who was only heard briefly on one conversation. The introduction of these conversations, Exhibit 3 through 60, at trial had the effect of totally misleading the jury as to their true import. Not only was the prosecution's use of the tapes calculated to obviate the truth, but many counsel during the course of summations, realizing the devastating inflamatory effect on the jury the tapes had, sought to disassociate their clients from the tapes thereby joining the prosecution in a condemnation of defendant Guerra. (See the summations of counsel for Eugene Biven and Steven Crea as examples.)

The wiretap conversations contained not only harsh language but conversations concerning kidnapping, guns, racial slurs and a myriad of unrelated events and criminal acts. It is hard to imagine any other evidence that could be more prejudicial to the defendant Guerra than to have these conversations which do not concern the charges in the indictment, but concern a fraud, a grand larceny, a "rip off", submitted to the jury. The prosecutions submission of this evidence is tantamount to prosecutorial misconduct if indeed, as alleged by defendant Guerra, they knew or should have known precisely what these conversations were really about, requiring this Court to order a new trial.

The Prosecution Knew The Wiretaps Were Nothing More Than A Rip-Off

During the course of the trial, but not for the jury, Asst. United States Attorney Lavin conceded that he knew that Peter Mengrone's son had never been kidnapped. The kidnapping of Mengrone's son was one of a series of lies utilized by Mengrone in order to get $30,000 back from prosecution witness Rossi. It should be pointed out that Asst. United States Attorney Lavin did not call one single witness to testify as to what the conversations on the wiretaps were really about. Albert Rossi, after all, was the moving force in the Mengrone "rip off" yet the prosecution asked Rossi not one question concerning the wiretapped conversations.

Mr. Lavin had full notice of your deponent's claims on behalf of the defendant that these wiretaps were not what they appeared to be, namely that they were statements made in support of a grand larceny and not statements made to further any

narcotics conspiracy. Not only was he notified several times during the course of the trial before the tapes were played, but in December, 1974, I personally informed him of these facts and claims in his office during the period when the wiretaps were being played for defense counsel. Yet at no time during the course of the trial did he present evidence about the true nature of these conversations. Even during the course of Mr. Lavin's summation he took the position that whether they were statements made in furtherance of a "rip off" or a drug conspiracy, the statements could be used to prove the allegations contained in the indictment. That position was taken by the Asst. United States Attorney even though the Court later charged the jury that if they found that the wiretaps were not related to a narcotics transaction but were only statements made in support of a theft of money then the jury could not receive the statements made as acts in furtherance of the charge of conspiracy.

Lt. Greeley, a state police officer, during whose investigation the wiretaps were employed, testified for the defense. His testimony to the extent it was permitted, made clear that the operation that empowered the wiretap was coordinated between at least the District Attorney of Westchester and Bronx Counties, as well as federal authorities. Lt. Greeley also testified that in his supervisory role concerning the wiretaps in question he was aware that there was no kidnapping of Mangrone's children. However, Lt. Greeley was prevented by the Court from testifying as to Peter Mangrone's cooperation with Westchester County

authorities. That the federal authorities were coordinated with the state authorities can hardly be doubted and was borne out by the fact that the United States Attorney had copies of wiretaps and transcripts made by the local law enforcement, as well as copies of all the surveillance memoranda conducted by state authorities of the wiretaps. These surveillance memoranda were turned over to defense counsel as part of "3500" material shortly before the start of the trial.

Yet, during the course of the trial, Assistant United States Attorney feigned that the cooperation between the state and federal authorities seemed to end at some point and that the federal authorities were unaware of statements made by Peter Mangrone after he became a cooperating individual with the Westchester County authorities (which they concede Mangrone did).

Before the prosecution's chief witness, Rossi, testified it was clear that he was well aware of the wiretaps (Tr. 685 *). However, Rossi claimed that he had no recollection of whether he had read these wiretapped conversations. (686) It also became clear during the course of the trial that before Rossi stole Mangrone's money, his partner, Ernest Coralluzzo, had already stolen money from Mangrone. (683) Even prosecution witness Gary Pearson also was told the very first day that the money was received by Rossi from Mangrone and that it was nothing more than a "rip off."

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* All page numbers refer to trial transcript.

Rossi however claimed that it didn't become a "rip off" until he received the money and that his intentions were "honorable from the beginning." This phrase "honorable from the beginning" was similarly used by Rossi in his description of the theft of money from Frank Matthews under similar circumstances several months earlier, the armed robbery of one Gregg Samuels in Florida earlier in 1973, and the armed robbery of a doctor of a substantial quantity of menita that same year. With the Mengrone theft, the reason for the change from "honorable" to "rip off" according to Rossi was that the money wasn't right and that he felt Lucas wasn't telling him the truth about connections he had and money he had access to. (341) Similarly with Frank Matthews, he didn't feel that Matthews could come up with all the money he said he would; with the doctor the price was too high for the menita; and with Gregg Samuels in Florida, Samuels didn't want to buy cocaine from Rossi; so in every case robbery became the result.

It becomes apparent with a close analysis of the testimoney and the wiretap conversations that Rossi's claim that this was "honorable from the beginning" is really a sham. First of all, Mr. Rossi on cross-examination couldn't remember who the source was for heroin to be delivered to Mengrone and Lucas (677, 681) even though on direct examination he claimed it was someone named Dom Boy. This elusive character, Dom Boy, along with a Louie (who is from Brooklyn and rest of his name unknown), Rossi claimed was the source of heroin to be delivered to Frank Matthews several months earlier (670-71). Further,

Rossi did not know the address or telephone number of either Dom Boy or Louie. This story was to camouflage for the prosecution the truth, which is that the Mengrone incident was always a "rip-off" and that it had nothing to do with any narcotics transaction. Rossi himself told Mengrone as much on September 14, 1973 on the telephone in conversation #1143:

> That from the beginning all this was supposed to be a beat--ha--from the beginning all this was supposed to be a beat and when I found out that there was really something around I said what do you want to beat this guy for?

From the above, it is plain that Rossi admits on the wiretap that it was a "rip-off" right "from the beginning." If more proof be needed, that it was a "rip-off" and never a narcotics transaction, it can be seen by the conversation between Rossi and Mengrone on September 7th, shortly before Rossi received the $30,000 in question. In that conversation #743, Rossi tells Mengrone that he has the narcotics which of course Rossi admitted at trial was nothing more than a lie to get Mengrone to part with the money (689). Yet in this conversation #743, Rossi says "maybe you want to see it in black and white... I mean, if you want to see it in black and white I'll cut em all up. We'll have a powder party."

Again, when asked about the conversation at trial, Rossi admits he had no goods and was lying. (689) In that same conversation (#743) with Mengrone on September 7th, Rossi tells Mengrone that he is in trouble unless he gets the money because two vicious people from Mulberry Street were going to take him "downtown" unless he got the money. Similarly at trial when

questioned about this statement, Rossi admits that it was a lie told to Mengrone to get him to part with the $30,000 (689-90). It is interesting to note that the September 7th conversation occurs at a time when Mr. Rossi testified at trial that he intended a narcotics transaction or in his words, it was "honorable" until he received the money. Through this analysis of the wiretap conversations, it is clear that Rossi was lying at trial and that the prosecution, from a simple reading of the wiretaps knew or should have known that this whole transaction was merely a theft of money.

The wiretaps also disclose that Rossi and Coralluzzo were partners in the Mengrone-Lucas deal. A look at conversation #733 on September 7th between Mengrone and Coralluzzo makes that clear when Mengrone tells Coralluzzo that Rossi is not getting the money without Coralluzzo being there. This becomes important later because the wiretaps disclose a feud between Coralluzzo and Rossi, but the feud is also a sham, made up by Rossi and Coralluzzo so that neither would be forced to return the respective sums of money they stole from Mengrone and Lucas.

After Rossi gets the $30,000 from Mengrone, the balance of the wiretap conversations between various people and Mengrone are all part of an attempt to stall Mengrone and to "put him off" so that he won't do anything to get him money back. It is during the course of this stalling period over the next three days that defendant Guerra is overheard. Guerra pretends that the deal will go through when indeed there is no deal, and there is no drugs except for phoney pancake mix prepared by Robert Browning and Rossi. This process of stalling Mengrone, trying to get more money from him, and keeping track of Mengrone to see what steps

he takes to get his money back begins on September 7th at 7:50 (shortly after Rossi gets the $30,000). In conversation #775 between Louise Lepore and Mengrone, Lepore who is clearly part of this "rip-off" tells Mengrone that they have to check the money out and that Rossi told him to call Mengrone. It also becomes apparent during that conversation (#775) that Mengrone has already been told by Corralluzzo that he has been "ripped off". Rossi even admits on cross-examination that he had Lepore call to give Mengrone a phoney story as to why there would be no delivery of drugs. (683)

Defendant Guerra's first conversation with Mr. Mengrone occurred some 24 hours after Rossi has stolen the $30,000, on September 8th, conversation #823. Mr. Guerra predictably, as part of the "rip off" of money, and having nothing to do with narcotics, makes up the story that Rossi is in alot of trouble. Obviously, Rossi never was in any trouble. As evidence of Mr. Guerra's non-involvement with Mr. Mengrone prior to this "rip off", Guerra in this conversation #823 asks for Mengrone's telephone number. When asked at trial whether Rossi had Guerra call as part of the stall and part of the "rip off" of Mengrone-Lucas, Mr. Rossi's memory conveniently fades. (696)

Robert Browning, who helped Rossi make up phoney pankake mix, periodically checks in with Mengrone and pretends that he doesn't know what's going on. (See conversation #828 on Septmmber 8th.) In conversation #829, 844 and 849 between Mengrone

and Mr. Guerra, it becomes clear that Mr. Guerra is part of this "rip off" of money and is seeking more money from Mr. Mengrone. During these conversations Mr. Guerra asks Mr. Mengrone for $15,000 more but by this time Mr. Mengrone has had enough and never supplies any more money. As is clear from an analysis of the taped conversations, Mr. Guerra became part of this fraud to get more money from Mengrone and Lucas and after Mengrone begins concocting threats and stories about involving other prople who have the power to get the money back and even making up a story about his sone being kidnapped, Guerra begins to extricate himself from the whole affair.

Within about 40 hours after his first entry into this fraud, Mr. Guerra withdraws. Indeed, it is Mr. Guerra who finally tells Mengrone that it has all been just a "rip off" in a conversation Monday morning, September 10th, conversation #891. The wiretap conversations, however, over Saturday night, September 8th, and Sunday, September 9th, make it clear that Guerra is involved in this fraud with Rossi, Browning and Leopre. Several times during various conversations on Saturday night and Sunday Guerra reports to Mengrone about conversations he had with either Rossi, Browning or Lepore showing that he was the "talker" or the "middle-man" whose job it was to stall Mengrone. (See conversations #855, 859, 864, 868, 873, 878). As further evidence that Guerra was just a "middle-man", if there need be more, in conversation #882, late Sunday night, Browning (who made up the pancake mix) tells Mengrone to stay in touch with Guerra.

As part of this fraud, Mr. Guerra says many things on the wiretaps in furtherance of this attempt to steal money and to act as a "middle-man" between Mengrone and those whohave his money. Yet, the prosecution choses at trial to portray all of these conversations as true and to use them as evidence of a narcotics conspiracy. For example, in conversation #891 on September 10, between Guerra and Mengrone, Guerra tells Mengrone that he, Guerra, is "out" $30,000. The obvious reason that Guerra tells Mengrone that he is "out" $30,000 is so that Mengrone will not look to Guerra for repayment of his $30,000. After all, Mr. Guerra, as can be seen by the wiretapped conversations, doesn't want to be held responsible for what others have done to Mengrone so he makes up the story that he is in debt $30,000. If it were true that Mr. Guerra was owed $30,000 by Rossi and others, Rossi would have testified at trial that he owed Guerra $30,000. But Mr. Lavin in his summation points to the $30,000 as talked about by Guerra in conversation #891 as proof that he was involved in the conspiracy charged when Mr. Lavin <u>knew</u> or <u>should have known</u> that it was made up by Guerra so that Mengrone would not look to Guerra for repayment. The $30,000 debt to Guerra is just one of various statements picked out by the prosecution during the Course of summation which were actually uttered in support of a fraud or a "con" and not in support of a narcotics conspiracy. The prejudice from all of this is manifestly clear.

To show how statements made on the wiretaps have nothing to do with truth, even Rossi in order to avoid repayment of $30,000 back to Mengrone pretends that Coralluzzo owed Rossi $67,000 (See conversation #1143 on September 14, 1973). When asked on cross-examination whether indeed Coralluzzo owed Rossi $67,000, Rossi claimed he didn't remember. Yet there was nothing in all of his testimony to indicate Coralluzzo ever owed him any figure approaching $67,000.

Rossi's claim of $67,000 owed to him was just another device used to avoid repayment to Mengrone and became the basis of the false feud for Mengrone's benefit between Rossi and Coralluzzo so that Rossi could have some excuse for not repaying the $30,000 he had stolen. This fictitious feud between Coralluzzo and Rossi was exploited by both on the wiretaps and even up to September 18, 1973, when in conversation #1379, Coralluzzo pretends to be feuding with Rossi so that he too would have some excuse for not returning the $12,000 he stole from Mengrone. That this feud was made up was clearly evident to the prosecution or at least should have been because Rossi testified at trial that he went with Coralluzzo on September 22, 1973 to Florida to "stick-up" Frank Flynn and that plans for this "stick-up" were made weeks before the trip on September 18, both Coraluzzo and Rossi were still play-acting as to a feud between them (see conversation #1379).

NEED FOR EVIDENTIARY HEARING

From all of the above, and from many other facts adduced at trial, it is clear that these wiretap conversations shouldn't have been played to the jury as true statements to establish a

conspiracy. Your affiant has prepared subpoenaes for various offices, including: The Westchester District Attorney's Office, the Bronx District Attorney's Office, the Drug Enforcement Agency, Peter Mangrone, Albert Rossi, and Lt. Greeley; in preparation for an evidentiary hearing. Through this hearing, the misconduct of the prosecution will be established and any doubts as to the real meaning of the wiretaps will be put to rest.

At the evidentiary hearing, defendant Guerra will prove that the statements by him on the wiretaps were in support of a fraud and that the prosecution knew or should have known that said statements made thereon could not be taken as proof of a narcotics conspiracy.

WHEREFORE, it is respectfully requested that this Court set down a date for an evidentiary hearing to allow witnesses and documentation to be produced so that the issue can be explored and so that the Court after hearing evidence can order a new trial for defendant Guerra based thereof, and for such other and further relief as to this Court may seem just and proper.

Gerald B. Lefcourt

Sworn to before me this

day of February, 1975.

Hardcastle
Report of Special Agent Keough
of April 18, 1974

3514

Hdtr

From Steve Keough, Agent in Charge, C.I.

Greg SAMUELS, jockey; set up the first time in
3 and 1/73. C.I. brought SAMUELS 2 kilos from D.C.
SAMUELS' partner was JEFF. LNU, who resides
on Star Rd. near Arthur Godfrey Blvd., Miami Beach.

Date:

Steve is on Star Rd. Arthur Godfrey Blvd. & Star St.
both run east & west, parallel but about 12
blocks apart.

Ref.

From our knowledge, Gregory SAMUELS is believed still
living at 1911 S.W. 27th Terrace, Broward County, Florida.
942-0374. The parents, Raymond & Ruth SAMUELS,
also reside at the same address.

A 310

ONLY COPY AVAILABLE

Ref.

Informant is a soldier in the Carlo Gambino crime family. Informant has connections that can, if properly handled, take him to top/direct drug connections. Informant desires to become a special undercover agent. He will not accept a plea to a lesser charge. Even if he receives less jail time-being marked as a stool pigeon while being incarcerated. He is confident that he can eventually infiltrate as high as direct connections in Marseilles, Corsica, Columbia and Mexico City. The reason for his confidence is that he has already received invitations to these and other parts of the world.

The informant states that the reason that you must always settle for low echelon drug pushers is that no one that you have can be vouched for by a co nected narcotics dealer. Higher eschelon people will not even talk with your people. The informant has been vouched for on numerous occasions and has a very honorable name among his peers.

If you accept him as an informant he wants immunity from prosecution. However in order to keep his cover from being blown the following should be complied with:

1) A mob connected lawyer will be used for his defense. The reason for this is to show that the informant has handled himself properly according to Mafia Code of Ethics.
2) No Judge shall have access to any information of our agreement
3) The informant wants only to meet with the HEADS of the depts. involved since he feels that this creates less chance of a leak.
4) In ref to #1 - The indictments involving the informant must be taken to trial. However the outcome must be favorable for him either acquittal or mistrial.
5) The informants family will have to be moved out of the state for their safety. It will be let known to whom it may concern that his wife has left him because he will not change his illegal activities
6) No Warrant for Parole Violation can be issued, if one is presently ready it will be recinded after a hearing in which the informant will have a lawyer present.
7) A legal change of name will be granted after a passport in the present name of the informant is issued. This xxx can be held by the proper authorities and given to the informant only when authorized to leave the country. A legal change of name is requested because if any records reflect the real name of the informant there will also be a leak.
8) The informant agrees to be taken off monthly parole reporting and xxxx placed on weekly this way he can give a comprehensive report at least once a week. A daily report will be given if necessary to a phone number. However it is requested that the number he calls have an ansaphone attachment and give an initial weather report, sports announcement etc.. All calls to this number will be made from a public telephone at varied times.

FESTA CAMPERLINGO CONVERSATION

EXHIBIT #2

TRANSCRIPT OF MONITORED CONVERSATION IN FRONT OF THE FOUR O'CLOCK CLUB, FT. LAUDERDALE, FLORIDA, ON MAY 4, 1974. PRESENT DURING THE CONVERSATION WERE JOSEPH CAMPERLINGO, RAYMOND THOMPSON, INSPECTOR GEORGE C. FESTA AND SPECIAL AGENT VINCENT FURADO. THE FOLLOWING SYMBOLS IN THE TRANSCRIPT DESIGNATE THE BELOW LISTED INDIVIDUALS:

C - JOSEPH CAMPERLINGO
T - RAY THOMPSON
F - INSPECTOR GEORGE C. FESTA
V - VINCENT FURTADO, SPECIAL AGENT

INITIAL 3-5 MINUTES UNREADABLE DUE TO MONITORING VEHICLE *** TO FIND A SUITABLE LOCATION TO RECEIVE THE TRANSMISSIONS.

FESTA: You know Allie uh you know Allie's all fucked up, right?

CAMPERLINGO: Yeah he keeps calling me from that fucken West Street, given me a heart attack everytime he calls me

.... laughter ....

FURTADO: Same way with us

FESTA: ... a connect down here with a somebody .. a federal guy or something?

CAMPERLINGO: (unreadable) I got a connect with a guy who's a Federal Judge ...

(PORTION INAUDIBLE DUE TO STATIC)

FESTA: You know, fucken guy I haven't seen him like in about five fucken years, right - gets a hold of me, can't get any fucken bread and I owe the guy from like a couple of years ago, because we did a lot of things together ... did he tell you we got some stuff, down south?

(PORTION UNREADABLE)

CAMPERLINGO: That's another reason ... he says that you guys ..

.... laughter ...

FESTA: These - this fucken well what we got down there we got our supplier. But like I can't just make a call and get 150 fucken keys. No fucken way. I mean ...

CAMPERLINGO: ... that can

FESTA: And I ain't got no fucken millions to fuck around with right? How I can get probably within a reasonable time a couple of weeks, probably 15 keys.

CAMPERLINGO: From where?

FESTA: Alright, the shit came out of Chile and now it's in Costa Rica. And the way I have it fucken set up which is a pretty good fucken deal ..banana boats, alright fucken New York you can't do a fucken thing now. You got all there they locked up a ** They locked up the fucken D.A. in Queens, the fucken thing is unbelievable down there. If I could get it here.

CAMPERLINGO Well, you could get it here, we could get it here for you ...
(PORTION UNREADABLE)

FESTA: How about Customs?

THOMPSON: ... well you got to

CAMPERLINGO: (UNREADABLE) You got to make you got guys down there right? So well we'd have to make connections...to put it on our boat ...

FESTA: No problem with customs...

THOMPSON Well no. You got the guy down on the beach.

CAMPERLINGO: Pick him up

THOMPSON: They just put it on the boat.

CAMPERLINGO Take it off.

FESTA: He said you had a connect with a customs guy?

CAMPERLINGO: I had a connect, I got a connect, with a Customs guy, he's not a Customs guy, I got a connect with a guy possibly. Take them through Customs, ah - the Islands - That doesn't mean ...

THOMPSON: Paradise Island

FESTA: Is he a good guy, can he do the fucken thing?

CAMPERLINGO: Yeah, but I would rather not do that.

THOMPSON: We can do it here ...

CAMPERLINGO You got it in ah Costa Rica we'll go there and get it. You got it, you got it...

FESTA: What would you want for something like that?

CAMPERLINGO: We get a boat. To go there and get it. Well, the way he told me see is that ... expense money.

FESTA: Right ... yeah his fucken bail is

CAMPERLINGO: And he says that he wants to make $50,000 ... because he wants to get himself bonded out. What I wanna do is if I'm gonna take the shot, I wanna be a partner ... We'll go and get it for ya and bring it here. Then whack it up, take your and we'll take our end.

FESTA: A couple of my guys goes with ya?

CAMPERLINGO: Yeah one guy can go.

FESTA: You know Allie's got a rap for being a fucken rip off. Now I ain't no fucken rip off, you know.

CAMPERLINGO: Well I had a little experience with Allie see...

FESTA: Allie ... always tries to use his fucken hands and I, that ain't my fucken bag, alright, see I've been without this fuck for like ten years and I'm doing alright, you know what I mean? And I could take my fucken time and I can get that shit out of there and up to fucken New York maybe within 6 months. But it ain't gonna do him no fucken good and I owe the fuck. That's the only reason I tell ya you know what I mean? And I don't like to get fucked around you understand, I mean look

CAMPERLINGO: Ah.

FESTA: I give you whatever the fuck, you know whatever reasonable, you know

CAMPERLINGO: Let me tell you something, let me tell you something Ah Allie shouldn't be ... he's got a big pair of balls to call me amking for a favor.

FESTA: I know.

CAMPERLINGO: You know why he's got a big pair of balls to ask me for a favor because he moved me around on a couple of deals that he shouldn't have moved me around on, understand? Now with his back against the wall he calls me and asks for a favor. How in all this I should tell him hey Allie look forget about it, you know what I mean?

(PORTION UNREADABLE) Now you're in trouble, you're backs against the wall now you call me.. I'm no rip off artist, understand. Everybody, but that's bullshit, everybody claims they're innocent, you understand.

FESTA: Sure

CAMPERLINGO: But this is the truth I'm no rip off artist.

FESTA: Even if you were, I don't care, I like - I deal man to man you know what I mean like ah

CAMPERLINGO: This is, this is, this is the way Allie told me he needs the shot ... I don't particularly have to do business with with Allie or with you or with anybody else.

FESTA: I know, I know.

CAMPERLINGO: ... I'm doing fine the way I am. But since he's in the shot wants to do business, I'll do business with you. Now I'll tell you right now it's honorable and it's up and up and we don't, we don't play fuck around. If I'm gonna cut a deal with you, I'm gonna cut a deal with you. If I feel that I gotta fuck you around I'll walk away from it.

FESTA: Now you told me you gotta get out, right? Gonna leave. Go to ya..

CAMPERLINGO: I'm leaving Monday.

FESTA: Alright.

CAMPERLINGO: But he's gonna be here. That's why I brought him *** you can cut it up with him, understand ah. Now you want him to go here's what we'll do. We'll go to Costa Rica with our boat and our crew. You can send a man if you want, to watch your end, it's not necessary, but you can. Matter of fact I think it's better that you do, cause in the event that something happens you don't have to make up, you don't have to doubt our word, with your own man there to see. You know what I mean.

FESTA: Well I'll tell ya there's a lot of fucken money I'll tell ye, if I can do it without any extra *** plus fucken bullshit of getting it up to New York and havin guys like...

THOMPSON: We'll get it right here

CAMPERLINGO: We'll get it all here...

FESTA: I mean if this fucken one goes good there's more, ah, ah

CAMPERLINGO: Here's what we do.

THOMPSON: We'll bring it here.

CAMPERLINCO: We'll bring it here to you this is our business. Smuggling, we'll bring it here to you, understand, ah. Then you take your end go about your business and we'll go about our business.

FESTA: What about the Customs any fucken problem with the feds?

CAMPERLINGO: Yeah.

FURTADO: But he told us that uh you had a hook in there that we could fucken guarantee no problem. Now he said guarantee.

CAMPERLINGO: No, no

FESTA: So he's full of shit.

CAMPERLINGO: Right. Allie, Allie is inclined to exaggerate and he's even more inclined to exaggerate now that he's in the, in the Joint. You know what I mean. Everybody does that.

THOMPSON: (TALKING IN BACKGROUND)

FURTADO: He says he's like a brother to you though, you know the fucken guy?

CAMPERLINGO: I do know him

THOMPSON: (BACKGROUND).. we put it on a speed boat and bring it in. You know what I mean, we don't fuck with customs..

CAMPERLINGO: We don't...with Customs. Here's what we do, we go down to Costa Rica, we'll *** We'll go back out to our boat, come back here. We'll *** our man and the little boat *** a man with you with us.

THOMPSON: ... He's gotta, gotta have a man down there for us to connect in ah

CAMPERLINGO: You send a man, you send a man with us and this way he watches your interest and you know what I mean.

FESTA: Well, look

FURTADO: How about the mule routine?

FESTA: Here's what we were thinking. We did it once it went pretty good. Instead of giving one guy like 10 fucken keys in a suitcase...and then we send three guys right. If one gets knocked off, we don't give a fuck. You know we can absorb it, there's no, it ain't that much of a fucken hassle. You know what I mean? We can take the...

CAMPERLINGO: But your problem is this, the problem is, isn't ah from Costa Rica to here the problem is gonna be from here to gettin it to New York where you want it, you know what I mean

THOMPSON: Here we can get it

CAMPERLINGO: Here we can get it with no problem I don't fuck around

THOMPSON: We can get it here

FESTA: How far away you gonna be, I mean, you gonna be totally out of touch or you'll be in contact with him.

CAMPERLINGO: I'm going on a trip. I'm goin on a grass trip understand. So I'll be gone 3 weeks.

FESTA: Wanna divvy up the grass?...

CAMPERLINGO: You wanna, you wanna buy the grass? You can buy it you can buy it all. Buy the whole load 2,000 pounds.

FESTA: Now look here's what I gotta do you wanna,what, you wanna go a fuckin full partnership on that. I mean that I you know I

CAMPERLINGO: I do yeah, you know

FESTA: I gotta talk to my fucken people, I gotta talk in New York. That's all. Look it's pretty uh, pretty fucken steep, no I mean you wouldn't go for a flat fucken shot. I mean the first time you know, I mean.

CAMPERLINGO: ...here's, here's, here's the shot. We don't have any boat. The reason we don't have a boat is because the fucken boat gets bagged they confiscated the boat, you're talking like $70,000, you know what I mean...so we don't own boats. We have access to charter a...boat...you know what I mean?

FESTA: Yeah.

CAMPERLINGO: Okay, now we can't go into a guy and charter a boat because they want names uh, uh, they want uh identification, companies. They do a lot of check up, you understand? This guy knows we're smuggling with the boat so consequently he charges for the boat we're willing to pay. The boat alone..$20,000... that's flat...you go, when you to, when you go to Costa Rica you gotta go with a boat that's gotta be ah, twin diesel with a sail. In case your deisel goes you got the sail. Talk about that kind of a boat, you're talking $100,000 up. You know what I mean. A guy, a guy blows he blows a $100,000 boat. You know what I mean? So he's not outa order when he's gettin $20,000 for the boat. You know what I mean.

FESTA: ...see I gotta double fucken problem...Allie... okay, alright, because Allie did some fucken funny things. Quick with the

CAMPERLINGO: He does

FESTA: Fucken hands and he's always with the fucken gun and he fucked up some people who were busted with me you know. I get stuck in the middle, so I can't even tell them like...(***)...but *** if this works out good maybe I can make a little fucken side... If it works good the first one works fucken good ah

CAMPERLINGO: See we went through the same shit with Allie, if it works good we can go further. Well his first shot didn't work good at all. You know what I mean?

FESTA: (UNREADABLE)

CAMPERLINGO: He was we were the only guys that got fucked not him

FESTA: Because I can make...I've been through that shit with him too, I mean...

CAMPERLINGO: When he

FESTA: (UNREADABLE)

CAMPERLINGO: Then he comes up. He comes up with a stunt that is uh fucken real ...you can't believe

...laughter...

CAMPERLINGO: Forget about it

FESTA: Alright listen, I get back to my people alright. If I give him a call next week.

THOMPSON: ...I'll be here until Friday...

CAMPERLINGO: I'm leaving Monday. Gonna take me 7 days to go where I gotta go. He's gotta leave after about 3 or 4 days after I'm gone, he goes and make the buy.

THOMPSON: ...I'll be here...about Thursday or Friday...

CAMPERLINGO: ...makes the buy and I meet him there and I load comes and flies back then I come back with the boat. Understand? So ah he'll be gone by...Monday figure he'll be gone by Friday

THOMPSON: ..by Friday I'll probably be back by Monday or Tuesday...

CAMPERLINGO: Probably be back Monday or Tuesday. Know what I mean.

FESTA: Well I guess I oughta.

CAMPERLINGO: So ah...I'll give you...

CAMPERLINGO: Where are you guys staying?

FESTA: No, I'm going back

CAMPERLINGO: You're going back

FESTA: I gotta get back to New York. I mean you know I gotta talk to the people right.

THOMPSON: Let us know ah...

CAMPERLINGO: Well

THOMPSON: ...it's good...way. We could do it with...we got... good package... ah, we'll get it, we'll get it back home. We'll bring it right back here for you...

CAMPERLINGO: We don't want cash we'll take the merchandise.

THOMPSON: ...it's a good shot down there if you're gonna go that far...make it worth your while...

CAMPERLINGO: See that's what happened last time.

THOMPSON: (UNREADABLE IN BACKGROUND)

CAMPERLINGO: He was in on a deal with us, we we brought in uh some grass and gave it to him and he brought it up to New York and that was the end of it.

THOMPSON: (UNREADABLE)

FESTS: ...I mean, uh...we'll sit down and make it feasible for both of us. I mean I'm not gonna like I say

CAMPERLINGO: Joey all we wonna do is earn. We don't want no

FESTA: (BACKGROUND UNREADABLE)

CAMPERLINO: Foolishness. We don't wanna have to come lookin for you or you come lookin for us

(VOICES IN BACKGROUND)

FESTA: That's right because the more time you spend doin that you're not in the fucken street making bread

CAMPERLINGO: And not only that you're only fucken educating the Police Department.

...laughter...

FURTADO: That's right

CAMPERLINGO: If these guys would learn this fucken shit they'd be better off every fucken rhubarb you have you're enlightening the fucken feds.

FESTA: I took a chance even fucken coming down here

CAMPERLINGO: I'll tell you the truth I took a chance talking to this guy on the telephone from fucken West Street... Understand. I took a chance coming to meet you, I don't...see you two guys in my whole life. I don't know who you are.

FESTA: Right well when I talk to you it ain't gonna be none of this...

CAMPERLINGO: Here's what you gotta do Joey...It's just a simple thing. Well us what you can do and then we'll tell you if you can do it

(PORTION INAUDIBLE)

CAMPERLINGO: Simple as that

THOMPSON: ...make it good because you know it's a long trip may as well as make it good

CAMPERLINGO: Wh wh make it good make (Thompson talking in background) Make make your, make your package good, understand, we can

THOMPSON: (TALKING IN BACKGROUND UNREADABLE)

CAMPERLINGO: Right we can we're goin there, the...the same you understand?

(UNREADABLE)

FESTS: Look it...an Italian guy...downtown you know?

FURTADO: Really, really good lookin shit

FESTA: Yeah, the...you know I mean, that that really fucken works you know. Alright let me give you a call next week, ***

THOMPSON: Alright you call me before call me before thursday.

FESTA: Right

THOMPSON: Thursday or Friday...

FESTA: What number you gave me?

CAMPERLINGO: No.

THOMPSON: No.

CAMPERLINGO: Got a pencil?

FURTADO: I don't have any pencil

CAMPERLINGO: Okay I got it.

(TWO OR THREE PEOPLE TALKING AT SAME TIME, MUFFLED AND UNCLEAR)

FURTADO: Okay

THOMPSON: You call me then I'll ah, you call me then I'll go out to a pay phone and call you back

FESTA: Alright...

THOMPSON: Try to make it before Friday because I'll be on. I know I'll be on a flight to the Islands Friday afternoon...

FESTA: Man I thought he had a fucken fed, you know, I thought that

FURTADO: We thought this was gonna be like a piece of cake

THOMPSON: You mean ah Customs guy?

FURTADO: Right

THOMPSON: (THOMPSON TALKING IN BACKGROUND UNREADABLE)

THOMPSON: No...you see we

FURTADO: People that work the borders the fucken you know we pay them and they let the shit go through

THOMPSON: ..we just bring it in ourselves you know we don't go through all that...we just we lead down there...

FURTADO: Well that's what we were told

FESTA: ...you know everytime I go overseas them that's you know I don't even like you don't even fucken move anymore...

THOMPSON: (UNREADABLE)

CAMPERLINGO: They striped me the last time the cocksuckers you know ***I who the fuck needs that shit

THOMPSON: We go down there and we get it right...and we bring it up we keep our boat out...we run it out to our boat and we're on our way back. We bring it back out here to the Islands out here then we switch to a speed boat. We get about 50-60 miles an hour and we're we're home...we don't ah, we don't fuck around with customs. But we have a guy in the Islands you know but very seldom uh. He's a real heavy person we just we don't need him because we don't fuck with customs. We just walk through

FESTA: Yeah but you do

THOMPSON: When you are on the boat coming up you don't need customs.

FESTA: Whatta mean Customs?

THOMPSON: ...fucken mile off shore, two miles or ten twenty miles off shore we run our shit in...

FURTADO: Yeah but this guy said it was a fed that could find out about cases and everything else. Freaken guy was right into it

THOMPSON: ...that guy Joey

FESTA: (UNREADABLE)

THOMPSON: Knows yeah I don't know him ah...

FURTADO: A Fed

THOMPSON: (UNREADABLE)

FURTADO: He could tell him before the fucken thing happened in what he said

FESTA: Joey...right

THOMPSON: ...put the area code Joey (UNREADABLE, SEVERAL VOICES)

THOMPSON: So ah best time to call is around like 6 or 7...

(UNREADABLE, SEVERAL VOICES)

FESTA: ...with that thing down there. Are you gonna get to that Judge? To take care of that then?

CAMPERLINGO: He's not a Judge anymore. He's ah he was a Judge. He gave it up, private practice

FESTA: I mean you got that Fed down there you know, someone...

THOMPSON: You're talking about our friend...?

FESTA: Yeah

THOMPSON: There ain't gonna be no...

CAMPERLINGO: They'll be no problem

THOMPSON No problem

CAMPERLINGO: Let me tell you something ah, I don't want to say guarantee you because that's the wrong thing to say but I'll say we're 99% sure.

THOMPSON: Yeah we'll get it here

FURTADO What ***...that can let it go th: ugh or what?

CAMPERLINGO: How do you mean let it go through? Let it go through Costa Rica through Customs?

FURTADO: No let it come into the country, you know, somebody down here that can fucken take care of the shipment for us. (PORTION UNREADABLE) Somebody...somebody that's fucken ah fucken involved in ah the law and shit, you know.

CAMPERLINGO: No

FURTADO: You don't know anybody?

CAMPERLINGO: No

FURTADO: Fuck he told us you knew somebody

FESTA: That fucken Allie you know

CAMPERLINGO: He's well he's inclined to exaggerate. You gotta understand why. He's up against the fucken wall. He wants everything to look rosey. Because he wants the deal to gel.

FURTADO: Well you know we're down here to find out what... you guys you know (VOICE IN BACKGROUND). What you guys can do for us as far as bringing heavy shit in.

CAMPERLINGO: Heres what we can do

FURTADO: ...who you know.

CAMPERLINGO: Here's what we can do we could ah almost any place you wanna go. We could go into the beaches at night, come back to our boat. Bring it back here and bring it in on the beach at night, understand.

FURTADO: Yeah

CAMPERLINGO: And you're talkin I mean we're bringing in, we're bringing in thousands of pounds of grass, coke and...

FESTA: Coke and...grass bothers me...

THOMPSON: ...thousand pounds of grass on a boat...

FESTA: But from here like to there I wanna go

FURTADO: Lot of money in it though

(SEVERAL VOICES UNREADABLE)

FURTADO: Fucken money's unbelievable

CAMPERLINGO: ...*** Coke is nothing we put it in a watertight container if need to, we throw it over the fucken side with a fucken radio beam on it. Come back three or four days later and pick it up....

FURTADO Oh yeah

CAMPERLINGO: ...pick it up

FESTA: Well, I'll get to Ray

CAMPERLINGO: Alright Joey

FURTADO: Nice seeing you, take care

THOMPSON: Take care

(SEVERAL VOICES UNREADABLE)

FESTA: You know, I don't fuck around we'll sit down

CAMPERLINGO: Talk it out

FESTA: You can have whoever you want there and we'll fucken work it out, alright

CAMPERLINGO: Alright you, you do with him because I'll be gone

FESTA: Alright

FESTA: Alright thanks a lot

CAMPERLINGO: Good

(CAR LEAVES)

(UNREADABLE)

FURTADO: 1016261

...END OF TAPE...

U.S. v. Coralluzzo - Opposition

AFFIDAVIT OF PERSONAL SERVICE

STATE OF NEW YORK,
COUNTY OF RICHMOND ss.:

EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 2 day of June, 1975 at No. U.S. Courthouse, N.Y.C. deponent served the within Appendix upon U.S. Attorney the appellee herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the appellee therein.

Sworn to before me,
this 2 day of June 1975

Edward Bailey

WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1973